

H Hall 180.

T H O U G H T S
ON
EXECUTIVE JUSTICE,

WITH RESPECT TO OUR
CRIMINAL LAWS,
PARTICULARLY ON THE CIRCUITS.

DEDICATED TO THE
J U D G E S O F A S S I Z E ;

And recommended to the Perusal of
All MAGISTRATES ; and to all Persons who
are liable to serve on CROWN JURIES.

WITH AN
A P P E N D I X,
OCCASIONED BY
A CHARGE given to the GRAND JURY for the
County of SURREY.

By a sincere Well-wisher to the Public.

— *Vir bonus est quis ?*
Qui consulta Patrum, qui leges juraque servat,
Quo multæ magnæque secantur Judice lites. HOR.

THE SECOND EDITION.

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TO THE
JUDGES OF ASSIZE.

MY LORDS,

Dedicating this little performance to your Lordships, is something like *Dean Swift's* Dedication to *Prince Posterity*—for certainly your Lordships' *official* existence is, for the present, annihilated; nor will it be brought into *being* till some time hence. However, the Author of these papers thinks, that there is no harm, in preparing some hints, which he hopes may be useful; and he is encouraged to think,

DEDICATION.

that, as there is now *nobody* to be found fault with, therefore *nobody* can be offended.

But although *Judges of Assize*, &c. do not at this moment exist, yet the *Public* does: and indeed its existence is rendered miserable enough, by the daily-increasing depredations committed on its safety and property. — This is humbly submitted to your Lordships' consideration, and recommended in the most earnest manner to your Lordships' seasonable animadversion.

I have the honour to be,

MY LORDS,

Your Lordships'

Most devoted humble Servant.



THOUGHTS
ON
EXECUTIVE JUSTICE, &c.

THE honour and welfare of
the kingdom in general, as
well as the security and happiness
of individuals, must depend on a
due administration of the laws.
Without laws to protect the per-
sons and properties of the people,
B they

they must become a prey to each other ; the *weak*, oppressed by the *strong*, must be liable to the loss of all enjoyment of liberty and safety ; the honest and industrious, plundered by the idle and abandoned, must be reduced to poverty and distress ; and even the richest and greatest, must be liable to that sort of dread and disquiet, which must reduce them, in point of comfort, to the standard of the poorest and meanest of their fellow-subjects ; perhaps even below this, as those who have most to lose, have most to fear. But though there be laws, and such as are admirably calculated to meet with, oppose, and crush

crush those violences and disorders, which must ever attend a mere state of nature ; yet, if these laws are not duly, constantly, and impartially enforced and executed, the condition of the people will be but little, if at all, benefited by them. *Vigilance, faithfulness, and activity* in the magistrate, will ever be the parents of security and comfort to the people : where *these* prevail, there will be peace and safety ; but where *these* are neglected, there will be disorder, confusion, and every evil work.

I am very unhappy, that I can, with the utmost truth, refer to the present state of this country, for

an illustration of what has been said on the disagreeable side of the question. No civilized nation, that I know of, has to lament, as we have, the daily commission of the most dangerous and atrocious crimes, insomuch that we cannot travel the roads, or * sleep in our houses, or turn our cattle

* An house in *Paris*, a few years ago, was supposed to have been attempted in the night-time;—the matter ended in the family being disturbed, and whatever occasioned this, soon ceased; but the master of the house said, that he thought his house had been attacked “*par des rossignols Anglois* :”—which droll expression sufficiently shews, that the frequency of *burglaries* in this country, are so far from being unnoticed by our neighbours on the continent, as to have become in a manner *proverbial*.

into

into our fields, without the most imminent danger of thieves and robbers. These are increased to such a degree in numbers, as well as audaciousness, that the *day* is now little less dangerous than the *night* to travel in; and we are not without fatal instances of the most wanton cruelty and barbarity, exercised on many of those unfortunate persons, who have fallen into the hands of these plunderers of the public.

As these are, apparently, increasing evils, they call aloud for redress; and we have one comfort yet remaining, which is, that a complete and adequate redress is to be found in our laws, when-

ever those laws are restored to their vigour and activity, by the several executive powers, or magistrates, whose province it is to declare and administer them, within their several jurisdictions.

I do not at all mean to enter into jurisprudential disquisition, or to carry the reader back to the days of *King Alfred*, who, by the wise institution and adjustment of provincial divisions, into tithings, hundreds, &c. laid such a scheme of responsibility, among the subjects of England, for each other, as made it every man's business and interest to prevent disorders of all kinds.—These wise and salutary regulations have long since
been

been obsolete, and, from various causes, retain little more than their names.—My intention is to take things as I find them, and to treat the laws of our country as they stand at present before us. I would be understood to confine myself to the penal or criminal laws; and, however it may be fashionable with many, to find great fault with the number and severity of these, yet I think it our happiness, that, as crimes have arisen, there have been laws made to repress them; nor do I conceive, that any man can reasonably find fault with this, except indeed it be the villain who is the object of them, and who certainly would wish to

be free and exempt from all restraint whatsoever. — As to the *severity* of our laws, I know of none but of the most wholesome kind; for it is this alone which can deter the savage minds of those who are the objects of that *severity*, from the commission of those outrages and mischiefs against which the *severity* of our laws is levelled. The regular, sober, and virtuous part of the society has nothing to fear from the *severity* of the laws, but they have much to *hope* for; they may hope by this to be protected in their persons and properties, and in the secure possession of their lawful rights; for, however the
 profligate

profligate and abandoned assailant may have cast off every humane and virtuous inducement to good, and have put on the savageness, fierceness, and cruelty of a wild beast, so as to have forfeited all right and title even to the character of a man—there will be yet some principle of FEAR left, on which the *severity* of our laws is intended to operate, so as to check and prevent the mischiefs he would otherwise commit; or, if he proceeds to the full extent of his wickedness, to fall upon him, as an example to others, who may yet be stopped before it be too late.

It is certainly most of all to be
wished,

wished, that crimes might be lessened by *prevention*; and this is never so likely to be the case, as when the fears of severe punishment duly operate on the minds of those whom no other consideration can restrain.

Oderunt peccare mali formidine pœna,

is an old and true maxim, and is, no doubt, the reasonable foundation on which the *severity* of our laws is built: and indeed, when this once ceases to operate, the sooner the malefactor is removed out of the society the better; for the wretch who can be hardened against the *fear* of what he may himself suffer, leaves the innocent
part

part of the society but too probable reasons to *fear*, that they shall find no end to their sufferings from him.

The prevention of crimes, is the great end of all legal severity: nay, the exerting that severity, by making examples of the *guilty*, has no other intention but to deter others, and thus pursue the great end of *prevention*. If this were not the case, all punishment would be nugatory, and therefore cruel; for the past could not be recalled, nor the least advantage accrue to the injured party, however much the criminal might suffer.

But if, by *severity* exercised on
the

the guilty, those who are following the example of their wickedness and outrage, are deterred by the example of their sufferings, the two grand purposes of all criminal law are answered: the *one*, in the prevention of evil; the *other*, in the security of the public.

Instead of lamenting the multiplicity of our penal laws, we ought rather to lament the occasions of them; which indeed are so frequent, as to make it impossible for society to exist, unless remedies are thought of and prescribed to stop their progress. These remedies, like all others, must be applicable to the diseases
which

which they are to encounter, and be faithfully and duly administered, otherwise they can be of no effect, and consequently of no value whatsoever. I may say, that the legislature has from time to time been assiduous in meeting crimes, as they have arisen, with wholesome laws; but those, whose duty and office it is to administer these laws, have now, for many years, been preferring their own *feelings* as *men*, to the duty which they owe the public as *magistrates*; and have been making so wanton and indiscriminate an use, or rather *abuse*, of certain discretionary powers with which they are invested, that safety and impunity

invite

invite forth and harden offenders, while danger and distress are every where menacing the innocent.

Highway-robberies threaten the traveller, whether by night or by day—the lurking footpad lies, like a dangerous adder, in our roads and streets—the horrid burglar, like an evil spirit, haunts our dwellings, “*making night hideous.*”—The farmer loses his sheep from the fold, the ox from his stall, and all sorts of people their horses from their fields, and even from their stables. These are but a part of that dreadful catalogue of offences, with which every *Old-Bailey*, and every *Assize-Calendar* is filled, and with which

this country is disgraced and insulted : and for which it has become a taunt and a proverb in the mouths of foreigners.

Such is our reproachful and alarming situation :—the cause of this has been already hinted ; and, as it is now prevailing more and more, the state of the criminal laws in this land may soon be said to resemble that of the laws of *Vienna*, as represented by *Duke Vincentio*, in *Shakespeare's Measure for Measure*.

*We have strict statutes, and most biting laws,
The needful bits and curbs for headstrong steeds,
Which for these MANY years we have let sleep,
Ev'n like an o'ergrown lion in a cave
That goes not out to prey : now, as fond fathers
Having bound up the threatening twigs of birch,
Only*

*Only to stick it in their children's sight,
 For terror, not for use ; in time the rod
 Becomes more mock'd than fear'd : so our de-
 crees,
 Dead to infliction, to themselves are dead,
 And liberty plucks justice by the nose ;
 The baby beats the nurse, and quite atwart
 Goes all decorum. ———*

Whoever examines the *common*
 and *statute* laws, which respect
 the criminal jurisdiction to be
 exercised over offenders of all
 kinds, must surely acknowledge
 the watchfulness of the legislative
 powers, both ancient and modern,
 over the lives, liberties, and pro-
 perties of the inhabitants of this
 country : a stranger, who should
 read over an accurate and well-
 digested code of our *crown law*,
 would

would imagine us to be the happiest, the securest, and best-protected people under the sun, in point of our internal police. He would admire the disposition of the *whole*, as well as the adapting of every *part* for the public good.—No dangerous crime without a prescribed severity of punishment—so contrived, as that the offender has nothing to *hope*—this inducement so precluded, as to leave no encouragement to villainy :—in short, he might be led almost to imagine, that the account we have of our safety from thieves and robbers, must be as perfect as in the days before the *Conquest*, when it was said, that

C

“ a child

“ a child might go from one end
 “ of the kingdom to the other,
 “ with a bag of money in his
 “ hand, without fear of having it
 “ taken from him.”

But when such a reader of our laws is told, that offences against those laws are daily committed—that they are multiplied now beyond the example of former ages—that no country is so infested with the depredations of robbers of all kinds;—he would be at an utter loss to account for this, till he was told, that the dispensers of these laws very rarely put them in execution; and therefore, that they were little more than a *scare-crow*, set in a field to frighten
 the

the birds from the corn, which at first might be terrible in apprehension, but in a little time became familiar, and approached without any danger, by even the most timorous of the feathered race.

The wisdom of our constitution has placed the executive power in the hands of the *King*; who is the chief magistrate in all causes, and over all persons: but, forasmuch as he cannot himself administer this power in his own person, he delegates this to others, who, particularly with respect to the *criminal* laws, act in his name, and represent his person: the chief of these delegated magistrates are

the *Twelve Judges of England*, whose high and important office it is to try criminals, to pronounce the sentence of the law upon them when found guilty, and thus consign them to that exemplary punishment, which the laws allot to their particular offences. These Judges are sages of the law, chosen from their professional situation at the bar, from among the ablest and most learned lawyers;—they are invested with great dignity, looked up to (as they ought) with very high respect*, and regarded
as

* Our *Judges* are not only respectable with regard to their *office*, but are so *incorrupt*,

as the great oracles of law and justice:—they are bound by a most solemn oath of office, duly to administer justice, according to the best of their skill and abilities, to all their fellow-subjects, &c.

Besides their attendance by turns at the session of *oyer and*

corrupt, as magistrates, that they *are*, what *Cæsar* said his wife *ought to be*—

Not only chaste—but unsuspected.—

As *private citizens*, I think it no disparagement to the rest of the kingdom, to say, that there are not *twelve* honefter or worthier men in it. But, as they are sharers in the common lot of what *Lord Chesterfield* so pathetically styles, “poor human nature,” they are liable to err, even (as *Voltaire* says of a certain *Abbé*) “*par l’excès de leurs bonnes intentions.*”

terminer and *gaol-delivery*, at the *Old-Bailey*, for the counties of *London* and *Middlesex*, eight times in a year; they are sent with a like commission, *twice* every year, into all the counties of *England*, that they may administer justice: two Judges are in each commission on the *circuits*, which are divided into *six*; and thus these magistrates set forth to carry terror to the guilty, and protection to the innocent, into every part of *England*.

Their fellow-subjects, of course, look up to them for security and protection, and depend on their faithful and strict administration of the laws, for the punishment
of

of wrong and robbery, and for the maintenance and protection of their persons and properties from violence and depredation—they must naturally expect that such *examples* will be made as the law intends; and as naturally hope, that, by means of such *examples*, they shall sit down in peace and safety, and have none* to make them afraid.

The very appearance of the *Judges* at the assizes, if we include the attendance of the high-sheriff,

* The political liberty of the subject is a tranquillity of mind, arising from the opinion that each person has of his safety.

SPIRIT OF LAWS, vol. i. 212.

5th edit. Nugent's Transf.

his under-sheriff, and other officers—the first gentlemen in the county forming that constitutional bulwark, the *grand jury*—that other excellent institution, the *petty jury*, who are to pass between the crown and the prisoners, on the trials of their several lives and deaths:—add to this, the vast concourse of people flocking from every part of the county, and assembling in multitudes to hear the solemn determinations of punitive justice—the sound of the trumpets—the Judge's solemn appearance in his robes, when seated in the place of judgment:—these, and many other circumstances, form one of the most affecting, the most

most awful scenes, that can be exhibited to the eyes of mortals ; and, if duly improved, might be supposed to strike a terror into the minds of the beholders, not easily to be forgotten.

I have described what ought to be, and what the constitution intended by the circuits of the Judges—which was no less than to carry terror and astonishment into the minds of all ; or, as it is well said,

Ut pœna ad paucos, metus ad omnes perveniat.

And at what a vast advantage does the Judge's situation place him, over the feelings, affections, and passions of his auditory !

Methinks

Methinks I see him, with a countenance of solemn sorrow, adjusting the cap of judgment on his head—while the crier proclaims—

“ O * yes ! O yes ! O yes !—
 “ My lords, the king’s justices,
 “ strictly charge and command
 “ all manner of persons to keep
 “ silence, while sentence of death
 “ is passing on the prisoners at
 “ the bar, on pain of imprison-
 “ ment.”

His lordship then, deeply affected by the melancholy part of his office, which he is now about to fulfil, embraces this golden

* A corrupt way of pronouncing the French word *Oyez*—*bear*.

oppor-

opportunity to do most exemplary
 good—He addresses, in the most
 pathetic terms, the consciences of
 the trembling criminals—he ex-
 patiates on the nature of their se-
 veral offences—shews them how
 just and necessary it is, that there
 should be laws to remove out of
 society those, who instead of con-
 tributing their honest industry to
 the public good and welfare,
 have exerted every art, that the
 blackest villainy can suggest, to
 destroy both—he enlarges on the
 fearful situation which the honest,
 the industrious, the virtuous part
 of the community must be in, if
 such as then stand before him at
 the bar, are any longer permitted,
 like

like savage beasts, to prey upon the public. No person, no property can be secured, no liberty enjoyed.—He then vindicates the *mercy*, as well as the *severity* of the law, in making such examples, as shall not only protect the innocent from outrage and violence, but also deter others from bringing themselves to the same fatal and ignominious end which now awaits the prisoners.—He then, in the most pathetic terms, exhorts the unhappy convicts, to consider well how best to employ the little space that yet remains between that moment and the grave — he acquaints them with the certainty of speedy death,
and

and consequently with the necessity of speedy repentance—and on this theme he may so deliver himself, as not only to melt the wretches at the bar into contrition, but the whole auditory into the deepest concern.—Tears express their feelings—and many of the most thoughtless among them may, for the rest of their lives, be preserved from thinking lightly of the first steps to vice, which they now see will lead them to destruction. The dreadful sentence is now pronounced—every heart shakes with terror.—The almost fainting criminals are taken from the bar—the crowd retires—each to his several home, and carries

carries the mournful story to his friends and neighbours; — the day of execution arrives — the wretches are led forth to suffer, and exhibit a spectacle to the beholders, too awful and solemn for description. They now *see*, that certainty * of punishment must await the guilty, and the whole *county feels* a lasting benefit, in the security and protection which such an example of punitive justice has procured them. These impressions will last their time, and carry their salutary effects, perhaps, for years together. Many,

* *Culpam pœna premit comes.* HOR.

many

many wretches, warned * by such examples, turn from the evil of their

* It is to be hoped, that this has been frequently the case; and I should conceive, that it would be more likely to extend itself for the good of others, if *criminals* were to be executed in *different parts of the county*, and that as near as possible to the place where the *fact* was committed; the neighbouring inhabitants would then have an opportunity of beholding, with their own eyes, the sad and bitter consequences of breaking the laws.

The present mode of executing a number of criminals together at the same place, which is usually at or near the *assize-town*, deprives the public, in a great measure, of the force of that example, which might accrue from the other above-mentioned method: neither the *persons* nor *crimes* of the unhappy individuals can be so noticed, as by severally executing them where the *fact* was committed. This might be attended with more trouble to the
Sheriff

their ways, cease to do evil, learn to do well. Thus the law has its effect—thus are the persons, properties, and lives of men most mercifully preserved, the public peace secured, and the most valuable ends of civil government fully answered.

The MAGISTRATE who thus dispenses justice, is a blessing to the community—a protector of the innocent, a terror to the guilty.—He is not only a representative of an earthly KING, but of the

Sheriff and his *officers*, and with more expence to the *county*; but these things ought not to be thought of, if by these means the *crimes*, and consequently the *sufferings* of others can, in any degree, be prevented by the force and terror of such examples.

KING

KING OF KINGS—for he is a *minister* of GOD *for good*.—*He bears not the sword in vain*. And when he is called to give an account of his *ministry*, with what an unspeakable comfort will he be able to reflect, that, through the faithful, upright, impartial, steady, and uniform discharge of his high office, he has contributed to the peace, welfare, and good order of society, as far as the powers with which the constitution invested him could enable him so to do; and that he has left an example to those who shall succeed him, that they may tread in his steps, and thus continue the exercise of justice and truth from generation to generation!

Is this the case in our day? are ALL our dispensers of the laws such as I have been describing?—The natural connection between *cause* and *effect*, must (alas!) lead us to answer in the *negative*.

Holy writ tells us, that, when *Saul* the king of *Israel* had received a positive commission from God to destroy the *Amalekites* utterly, and all that belonged to them, he executed his commission with such partiality, as to save the *Amalekite* king *Agag* alive; and the best of the sheep, oxen, and fatlings, and all that was good, and would not utterly destroy them; but every thing that was vile and refuse, that he destroyed utterly.

utterly. When *Samuel* afterwards met *Saul*, *Saul* expressed himself thus:—"Blessed be thou of the Lord, I have performed the commandment of the Lord." And *Samuel* said, "What meaneth then this bleating of the sheep in mine ears, and the lowing of the oxen which I hear?"

Now, if our *Judges* of *assize* really execute their commissions as they ought, what meaneth then these numbers of burglaries, highway robberies, these depredations, by day and night, in our roads, streets, houses, fields?—How are our news-papers filled with daily accounts of mischiefs done on the persons and properties of his ma-

jefty's subjects, by *felons* of every denomination ?

One reason, and only *one*, can be given for these things. The law is not in fault, it is wisely contrived to prevent them, by holding forth *certain* punishment ; but that punishment has been rendered so *uncertain*, or rather the suspension of it so *certain*, as to prevent the operation of the laws.

I remember to have seen a fellow at Bristol, who was by trade a *viper-catcher*. He produced, and opened, a large box, with about one hundred vipers in it, into which he put his hand, and took them up, at least half a dozen in a bunch. I trembled

at the sight, expecting, every instant, to see the man bitten : but my fears were soon removed, by being told, that all their fangs were cut out—so that, if I had pleased, I could myself have handled these horrid creatures with all safety.

Methinks, that our criminal laws are reduced to the state of the aforesaid *vipers*—their sting is gone, their fangs are out, their terror is lost ; and our *viper-catchers* seem to have so contrived the matter, as that the laws shall hurt nobody, who chuses to sport with them.

Since I began these sheets, I have had some conversation with

an eminent barrister, upon these subjects; and he furnished me with an anecdote, which abundantly illustrates what has been said.

Some years ago, when he went the *Norfolk* circuit, he accidentally had occasion to see a fellow who had been capitally convicted, and, having received sentence of death, was remanded to prison, and left for execution. It seems he had been an old offender, and before had had some hair-breadth 'scapes for his life. My friend expostulated with him, and asked him how he could venture again on his old practices, after so many escapes? "Ah, Sir," said the fellow,

fellow, "that's the very thing—
 "there are so many chances *for*
 "us, and so few *against* us, that I
 "never thought of coming to
 "this.—First," said he, "there
 "are many chances against being
 "discovered—so many more that
 "we are not taken—and if taken,
 "not convicted—and if convict-
 "ed, not hanged—that I thought
 "myself very safe, with at least
 "twenty to one in my favour."

The argument which this *vil-
 lain* used, is, no doubt, in the
 thought of all the rogues in
 the kingdom, who find equal en-
 couragement to persist in their
 evil courses, with this fellow;

for the news-papers * assure them, on relating the conviction and condemnation of the criminals at the several assize-towns, that, "they were *all reprieved* before "their lordships left the town." I will not say *always*, but this is most *usually* the case.

Nay, I once heard a *Judge*, in his charge to the grand-jury, say

* It may be supposed, that, at certain periods, the *gentlemen* of the *road* peruse the *news-papers*, with as much avidity and diligence, as certain *gentlemen* of the *turf* peruse the *racing-calendars*; and, as *these* are greatly surprized and alarmed when the *long odds* are lost, and the *knowing-ones* taken in; so are the *others*, when they find some notorious *thief* left for *execution*.

to

to this effect, that, “ Where men
 “ robbed on the highway, and did
 “ not use much violence, or do
 “ any mischief to the persons they
 “ robbed, he thought them pro-
 “ per to be recommended as ob-
 “ jects of mercy.”—This was no
 doubt carried to the gaol, and
 received with high applause : and
 at that very assizes, five or six
 highwaymen were convicted on
 the clearest evidence : — but —
 “ they were all reprieved before
 “ the Judge left the town.”

As for stealing *sheep* and *horses*,
 which the wisdom of the legisla-
 ture has made felony without be-
 nefit of clergy, these are almost
 sure

sure * of a *reprieve* ; and this is now so much the fashion, as to have

* This is so much the case, that the chances are at least *forty to one* in favour of the thief. — The discovery is now rendered more difficult than ever, and of course the theft itself more safe and easy—for, of late years, there have been set up *horse-slaughter-houses*, of which there are several in and about *London*. Hither the stolen horses are frequently brought, and slaughtered, after which they cannot well be traced. The profits arising from the *skin*, the *fat*, and the *flesh*, which amount usually to about *thirty shillings* (as I am informed) are the temptations to this species of horse-stealing, especially in the counties bordering on the *metropolis* : so that a horse, worth twenty, thirty, fifty, or even an hundred pounds, which a gentleman, or other person, may turn into his field over-night, in confidence that the law will protect him, may be stolen, and carried to the slaughter-

have become very near a *certainty*,
and does almost amount to a *sus-
pension*

slaughter-house before morning, and never seen or heard of more. This is a matter very difficult to be proved, yet some few have been convicted. The first I ever heard of, was at the *Old-Bailey*, about five years ago.—A villain had stolen a gentleman's favourite riding-horse, very fat and in fine order, out of a field somewhere near *Lee Bridge*. This fine animal was carried to one of these infamous horse-slaughter-houses and killed; but it so happened, that he was traced, and though not time enough to save his life, yet time enough to find his skin, which was sworn to, and the man convicted; but, to the astonishment of all that heard it, this barbarous and injurious villain was—re-prieved! Since that, *two* or *three* have been executed in some of the home counties.—All this excess of barbarity and wickedness, has come by degrees, owing to the lenity exercised towards horse-stealers. The law says they
shall

penſion of the *penal laws* which relate to theſe offences.

In ſhort, the *beſt* way, that is, *ſhall be hanged* ; thoſe who are to put this law in execution, ſay—they ſhall *not*. In ſhort, the *ſic volo* of the legiſſature, is abſolutely controuled by the *ſic nolo* of a Judge. This has paſſed for ſome years pretty uniformly upon the public ; but it is illegal, arbitrary, and un-Conſtitutional ; tending to overturn the true diſtinction between the *legiſſative* and *executive* powers, to the encouragement of all manner of diſorder and villainy, and to the deſtruction of peace, good order, and property among the ſubjects of the kingdom. That a Judge has a power to *reprieve*, for juſt and reaſonable cauſe, is *true*—but that he has a right to abuſe that power, to the ſuſpenſion of the *penal laws*, is *not true*.—He is doubtleſs as anſwerable for mal-adminiſtration of his office in this reſpect, as in any other.

Qu. If theſe *horſe-ſlaughter-houſes* are not objects of ſerious enquiry by the *legiſſature*?

the

the most *profitable* way, as things now stand, to deal in *horses* and *sheep*, is to *steal* them; for then there is no *prime cost* upon them, except to the unhappy people from whom they are stolen.

However, these offences have been looked upon in so serious a light by the legislature, so detrimental to society, and so injurious to individuals, that it has been found necessary to endeavour to put a stop to them, by ousting the offenders of their clergy: and there can hardly be a doubt, but, if the intention of the laws had been duly observed, by those whose province it is to dispense them, the farmers, whose
property

property mainly consists in their live stock, might have had them as safely secured in their fields and pastures, as if they were ever so carefully locked up at home. And it is a very melancholy consideration that it is not so; and a very great scandal and reproach to a country, which pretends to civilization, that we are not more secure in our property of every kind, than if we were savages. Perhaps we are, upon the whole, *less** so; for I much question whether there

* Among the ancient *Scythians*, flocks were esteemed their greatest wealth; they lived on their milk, and clothed themselves with their skins. THEFT was a capital offence. The *severity* of the punishment had so good an effect, that

there is to be found a people upon earth, who suffer in the invasion of their properties as we do.

Some have said, that a scruple of conscience in *Judges*, prevents the execution of the laws against certain offences—that they think them too severe for the offence, and therefore constantly *reprieve* those who are convicted. But I do not apprehend that this is at all the province of a *Judge*—what-

that they could let their numerous *flocks* wander from place to place, without *danger* of losing them. See An. Univ. Hist. vol. vi. p. 64.

The *security* of these people, like that of all others, must have arisen from *executing* the laws as well as *making* them. We should be just as *safe* if we did the like—*Idem semper agit idem.*

ever laws the parliament sees necessary to enact, the *Judge*, agreeably to his *oath of office*, is bound to declare * and pronounce; and his standing between the judgment and execution, is taking upon him-

* “ It is possible that the law, which is clear-
 “ sighted in one sense, and blind in another,
 “ might, in some cases, be too severe. But, as
 “ we have already observed, the national Judges
 “ are no more than the mouth that pronounces
 “ the words of the law, mere passive beings, in-
 “ capable of moderating either its force or ri-
 “ gor. That part therefore of the legislative
 “ body, which we have just now observed to be a
 “ necessary tribunal on another occasion, is al-
 “ so a necessary tribunal in this; it belongs to
 “ its supreme authority to moderate the law in
 “ favour of the law itself, by mitigating the sen-
 “ tence.”

SPIRIT OF LAWS, Nugent's

Transf. 5th edit. p. 232.

self,

self, not only to be wiser than the law, but a power, which, if wantonly and causelessly exerted, must render the most important and salutary laws contemptible and useless.—The *Judge*, in such a case as this, sets himself above the law, and presumes to exercise an authority with which the constitution has not intrusted even the crown itself. We all know how a *dispensing power* over the penal laws was attempted in the days of kings who aimed at arbitrary power, by setting themselves above the laws, and wanting to govern without them; and we also know what this ended in. But where is the difference, be-

E

tween

tween the arbitrary prevention of trial, and the arbitrary prevention of execution?—the *former*, perhaps, may be more glaringly arbitrary, but the *latter* will answer the same end.

That the *king* has an inherent power to pardon all offences against his crown and dignity, is most certain: and very dreadful would it be, if he had not such a power; for otherwise we should, in very many cases, which might be mentioned, be liable to suffer, however innocent, if once convicted, through the malice or wickedness of our fellow-subjects. But will any body contend, that the constitution, by intrusting the
crown

crown with the power of pardon for the most salutary purposes, could ever mean to set it above the law, so as that the execution of it should wholly depend on a wanton and arbitrary exercise of this prerogative, to the utter suspension and subversion of all law whatsoever ?

So the Judges have a power to *reprieve*: and thankful may we be that it is so; for, by this, they are enabled to save lives which ought not to be taken away. For instance—a Judge perceives prejudice and malice in the *jury*, a fixed determination, right or wrong, to convict the prisoner; the evidence by no means proves

the case; the *Judge*, accordingly, in his direction to the *jury*, takes due notice of this, and leaves the matter to the *jury* in favour of the prisoner; notwithstanding which, they find the prisoner *guilty*—here it becomes the *Judge's* duty to reprieve, and recommend the convict to the royal mercy, of which such a convict is undoubtedly an object. So, where there is a contradiction and contrariety of evidence, and, though the *jury* convict, the Judge is by no means satisfied in his own mind of the guilt of the prisoner.—Likewise, in cases where there is a doubt of the law—or where life may depend on vague and uncertain words

words in an act of parliament, of very doubtful construction—or where a fact may be merely within the *strict letter* of the law, but by no means to be reckoned among the degrees of mischief, which, according to the *spirit* of the law, are the intended objects of it—or where facts appear after the condemnation, which incontestibly prove the innocence of the convict. In these, and in some few other instances which might be named, the *Judge* is not only justified in *reprieving*, but would not execute *judgment in mercy* if he did not.

But to exercise this power of *reprieve* wantonly, and indiscrimi-

E 3. nately,

nately, so as to *save felons* only because they are *condemned*; to defeat the end of the law by a mere arbitrary dispensation of a *Judge*, who, to gratify his *feelings* as a *man*, violates his *oath* and *duty* as a *magistrate*, is to abuse a most salutary power to the most mischievous purposes. It makes void the law;—its terror, and therefore its best use, is no more—the * *innocent public* suffers, the guilty

* *Tully* defines *pity*, as—“*Ægritudo ex* “*miseriâ alterius injuriâ laborantis*” — “*an* “*anxiety, care, or sorrow (of mind) excited* “*by the misery of another, labouring under* “*injury.*” If this definition be just, one should think, that the *injured* public, rather than the

injurious

ty invader of its property triumphs.

A soldier, in one of the last encampments, took to marauding, and stole whatever he pleased from the poor cottagers, whose misfortune it was to dwell in the neighbourhood of the camp. He particularly fixed on a little garden belonging to two old people, a man and his wife, and used to come in open day, in the sight of the owners, and take their cab-

injurious robber, should be the object of the magistrate's compassion.

It was a fine saying of the great and good lord chief Justice Hale—"When I find myself swayed to *mercy*, let me remember, that there is a *mercy* likewise due to the country."

bages, and other such-like things,
 for his own purposes; the poor
 old woman had often remonstrated
 with him on these occasions, but
 only got oaths and curses, and
 threats for her pains. One night
 (in the middle of the night it was)
 this villain forced open the door;
 these poor people were in bed;
 and he dragged the woman out
 of bed, to her infinite terror and
 astonishment, made her tell where
 their money was, and robbed them
 of their little *all*, which amounted
 to *five shillings*. These circum-
 stances appeared to demonstration
 on the trial, and the fellow was
 convicted of this atrocious and
 shocking fact. He received sen-
 tence

tence of death. He was * *reprieved* before the Judge left the town !

At an assizes after this, an highwayman was convicted, on the clearest evidence, of a most audacious highway robbery in the *day-time*. Three ladies were together in a chariot, two of them very young. The robber over-

* If this affair had happened in a rich and opulent family, and the lady of the house had been dragged out of bed at midnight, terrified almost to death, and the house robbed—what *Judge* would have *ventured* to reprieve the offender ? yet, if it had been done in *that case*, it would not have been so injurious as in *this*, because the rich can afford, in a great measure, to defend their houses, by dogs, servants, arms, &c. whereas the poor have no defence, but the law. If this be withheld, they are totally defenceless.

took

took the chariot, and, with the most horrid oaths and imprecations, swore he would blow out the coachman's brains if he did not stop. On the chariot being stopped, the villain held a *cocked pistol* to the breast of one of the young ladies, for about *a minute and an half* (this the coachman swore positively) and, in this situation, he plundered the ladies of some money. During this transaction, we may well suppose the terror of the young lady to be very great, and to be not a little heightened by the fellow's threatening to shoot a poor woman, who stopped by the side of the carriage, if she did not walk on.

The

The perpetrator of the above audacious fact, was an OLD OFFENDER, who had TWICE before been indicted, tried, and convicted of highway robbery—once at an assizes for the same county, in the year 1777, for robbing a gentleman on the highway, of twenty-two pounds twelve shillings.—Judgment was respited at that assizes, because he was sick, and could not be brought up to receive sentence; but he afterwards received his majesty's most gracious and free pardon.

Afterwards, at the *Old-Bailey*, in *September* session 1782, he was, together with a comrade of his, convicted again of a robbery on
the

the highway, and again received sentence of death—he was respited—and, in *December* sessions following, received his majesty's mercy, on condition of transportation to *Africa*, during his natural life.—Afterwards, *viz.* on *September* 17th, 1783, he again received his majesty's free pardon, and was discharged.—Some months after this, *viz.* in *May* 1784, this incorrigible villain committed the robbery on the highway, mentioned above, on the *three ladies*, of which he was, after an impudent *alibi* defence, convicted on the clearest evidence—received sentence of death—
and.

and was *reprieved* before the *Judge* left the town * !!

I heard

* The *good* effects of this kind of lenity, were felt, in the county where this happened, very early after the said assizes.—Three post-chaises were robbed at noon-day, in their way to London; and, some time after, a lady in her carriage was robbed at eleven o'clock in the morning. Another was robbed in the day-time, within a few yards of her own door. Afterwards, three ladies in a post-chaise were robbed at one o'clock at noon (November the 6th, 1784) by two highwaymen, whom I saw pursued, and heard that they were taken, a few miles off, by the pursuers.

N. B. They were *both* convicted at the next assizes, but only *one* of them executed, though *both* equally guilty of the fact. Thus the *saving* one, exactly *counteracted* the example made by *executing* the other, and, probably, will occasion the *sufferer's* life to be *thrown away*—not only this, but if *duly* improved, as no doubt

I heard the history * of this fellow, at the assizes where he was last tried : it was publicly talked of ; and if the *Judge* did not hear it, it could only be, because *reprieves* are too much of course, to be supposed to need any enquiry into the characters and circumstances of those on whom they are bestowed.

This offender, like numbers of others, having done so much to be *hanged*, is not to take any *blame*

doubt it will, when time shall serve, by the *surviving thief*, it may be the *hanging* of a dozen more, for the mischief they will be encouraged to commit.

* That was, in general, that he had been *twice* before convicted, and pardoned—but I have extracted the particulars above-mentioned from authentic certificates.

to

to himself that he has not *succeeded*: he must at present console himself and friends, like the heroic *Portius*—

“ ’Tis not in mortals to command success,
“ We will *do more*, SEMPRONIUS, we’ll
deserve it.”

The above two cases stand as proofs of that wanton and dangerous abuse of power, which, if not checked *, must overturn the whole system

* *Montesquieu* observes, that, one part of the duty of the representatives of the people is—
“ to see whether the laws in being are duly
“ executed.” SPIRIT OF LAWS, Nugent’s

Transf. p. 227, 5th edit.

And again, p. 231, “The legislative power,
“ in

System of our criminal laws, and leave the public to be plundered at the will of individuals.

In *France*, capital offences seldom, if ever, meet with a relaxation of the laws—robberies and burglaries especially—and therefore they are very seldom * heard of.

“ in a free state, has a right, and ought to
 “ have the means, of examining in what
 “ manner its laws have been executed—an ad-
 “ vantage which this (the *English*) govern-
 “ ment has over that of *Crete* and *Sparta*,
 “ where the *Cosmi* and *Ephori* gave no account
 “ of their administration.”

* In the days of *Queen Anne*, during the war in *Flanders*, when the *Duke of Marlborough* and *Prince Eugene* commanded the allied army; a soldier, under the immediate department of *Prince Eugene*, was condemned to be hanged for

of. I believe, in no country but this, are *felons* safe from the law ;
and

for marauding. The man happened to be a favourite with his officers, who took great pains to save his life ; and for this purpose interceded with the *Prince*, who refused absolutely to grant their request. They then applied to the *Duke of Marlborough*, begging his Grace to interfere : he accordingly went to *Prince Eugene* ; who said, he “ never did, and never “ would, consent to the pardon of a marauder.” “ —Why,” said the *Duke*, “ at this rate, we “ shall hang half the army.—I pardon a great “ many.”—“ That is the reason,” replied the *Prince*, “ that so much mischief is done “ by your people, and that so many suffer for “ it.—I never pardon any, and therefore there “ are very few to be punished in my department.”—The *Duke* still urged his request ; on which the *Prince* said—“ Let the matter be “ enquired into, and if your Grace has not “ executed more than I have done, I will

F

“ consent.

and therefore there are ten times the number of felons among us, than in any other country. No other reason can be conceived for this,

“ consent to the pardon of this fellow.”—The proper enquiries were accordingly made, and the numbers turned out very highly in favour of *Prince Eugene*; on which he said to the Duke—“ There, my Lord, you see the benefit of example.—You pardon *many*, therefore you are forced to execute *many*; I never pardon *one*, therefore *few* dare to offend, and, of course, but *few* suffer.”

The reasoning, which may be drawn from the above, on the side of strict discipline, is not only applicable to *fleets* and *armies*, but to all government whatsoever: the civil interests of society can no otherwise be protected, than by a *due* and *certain* execution of the laws. The *Marquis of Beccaria* observes very truly, that —“ a *less* punishment, which is *certain*, will do more good than a *greater*, which is *uncertain*.”

The

this, but the almost total relaxation of discipline, the little consideration that is paid to the peace and quiet of the public, and the almost *certainty* of escape from *death*, with which the minds of robbers are impressed. Certainty of punishment carries a terror to the heart, which is not easily overcome; but when that *certainty* decreases, the terror will decrease in the same proportion.

The above anecdote may also serve as an illustration of those seeming paradoxes—

Crudelitas parcens, Lenitas puniens :

and is exceedingly applicable to our proceedings, with respect to punitive justice, as administered in this kingdom; where so many wretches suffer, for crimes, which they have been tempted to commit thro' hope of *impunity*.

Dr. Johnson, in his *Journey to the Western Isles of Scotland*, tells us—that “the mountaineers are
 “thievish, because they are poor,
 “and, having neither manufac-
 “tures nor commerce, can only
 “grow richer by robbery. They
 “regularly plunder their neigh-
 “bours, for their neighbours are
 “commonly their enemies; and,
 “having lost that reverence for
 “property, by which the order of
 “civil life is preserved, soon
 “consider all as enemies whom
 “they do not reckon their friends,
 “and think themselves licensed
 “to invade whatever they are not
 “obliged to protect.”

This ingenious author then
 presents

presents us with a very different scene, which may serve to illustrate and enforce what has been said before in these papers.——

“ By a *strict administration of*
 “ *the laws*, since the laws have
 “ been introduced into the high-
 “ lands, this disposition to thievery
 “ is very much repressed. Thirty
 “ years ago, no herd had ever
 “ been conducted through the
 “ mountains, without paying tri-
 “ bute in the night to some of
 “ the clans; but cattle are now
 “ driven, and passengers travel
 “ without danger, fear, or molef-
 “ tation.” Page 98.

Again, page 214.

“ I doubt not, but that, since the

F 3 “ regular

“ regular Judges have made their
 “ circuits thro’ the whole country,
 “ right has been every where more
 “ wisely and more equally distri-
 “ buted.”

“ The roads are secure in those
 “ places, thro’ which, forty years
 “ ago, no traveller could pass
 “ without a convoy.” Page 215.

Such are the happy consequences of “ a strict administration of
 “ the laws,” in an almost savage
 country : whereas, by an undue
 relaxation in the administration
 of the laws, we are, in this civi-
 lized part of the island, almost
 in as bad a condition, as the high-
 lands of *Scotland* were, before they
 had

had either Judges or laws among them.

The public have an undoubted right to look up to the Judges of the land for protection and safety; and those laws, which are the birthright of every subject, from the highest to the lowest, ought to be employed in the defence of their persons and properties from violence and outrage of every kind: if this be not the case, every man must stand in dread of perpetual injury; and has a right to complain, in the loudest and strongest terms, of those, who, instead of preventing these disorders, are little better

than accessaries * before the fact
to the daily commission of them.

This

——*Sæviior ense*

Parcendi rabies,

so far from deserving the sacred

* This sentiment is finely touched by our
inimitable *Shakespeare*—Measure for Measure,
Act I. Scene 4.

FRI. *It rested in your Grace*

*To unloose this ty'd-up justice, when you pleas'd:
And it in you more dreadful would have seem'd,
Than in Lord Angelo.*

DUKE. *I do fear, too dreadful:*

*Sith 'twas my fault to give the people scope,
'Twould be my tyranny to strike, and gall them,
For what I bid them do: for we bid this be
done,*

*When evil deeds have their permissive pass,
And not the punishment.*

name

name of *mercy*, is in fact the highest *cruelty*.

In the first place, It encourages the daring and profligate to prey on their fellow subjects, insomuch, that no man is safe but the robber himself.

Secondly. It draws forth many, by the hopes of impunity, to commit actions, which in the end bring them to an ignominious death—in all such instances, it is no better than *murder*.

Thirdly. It so destroys the force of the examples that are made, as to take away their *terror*, consequently their *use*; and this is no better than throwing away the lives of those who are executed—
and

and if so, little better than *murder*.

Fourthly. Though the number of the executed are *comparatively few*, with respect to the numbers that are *condemned*, yet they are *positively many*; so *many*, as to shock the humanity of every man that has not lost all feeling — and this is the consequence of a precarious and uncertain administration of justice; for, were justice invariably and steadily administered, according to the laws, and to the duty of those who are to dispense them — as offences would be *few*, so would executions be *few* also.

Fifthly. What a discouragement

ment doth this same *parcendi rabies* give to the zeal and care of the inferior magistrate ! when, after much trouble, and some expence, in many cases, he is to commit an offender for trial, no other end is answered, than exhibiting a mere farce at the next assizes, where the purposes of justice are to be defeated, and consequently to be laughed at by every thief in the common gaol.

Sixthly. This throws also a great damp on prosecutions ; for to what purpose * is it that a man

* *Quid tristes quarimonia,*

Si non supplicio culpa reciditur ? HOR.

But wherefore do we thus complain,

If justice wear her awful sword in vain ? FRAN.

shall

shall travel many miles, perhaps almost three parts over a large county, with a number of witnesses, when, after all, it is ten to one that the example, which he seeks to be made for the sake of the public, is turned into an encouragement to other thieves, to rob him as he returns home.

Seventhly. As it is the glory of a society, that peace and good order are maintained within it, so is it the reproach and disgrace of any people, that all manner of violence and rapine are encouraged, by a partial, uncertain, and inadequate execution of the laws.

Eighthly. How shocking is it to consider, that, in a trading country like this, where persons
are

are obliged to travel at all hours; no man can stir out a mile from his house, without an apprehension of being robbed, and perhaps murdered! for of late, we have had instances of the most savage barbarity exercised on the persons of his majesty's subjects, whose fate it has been to be met by robbers.

For the above, and for many other reasons which might be adduced, I cannot help subscribing to that saying of Machiavel, that —“ Examples of justice are more “ *merciful*, than the unbounded “ exercise of pity.”

But perhaps it will be said, that, though so few capital convicts are
punished

punished with *death*, according to law, yet they are punished either by transportation, or by being sent, for a term of years, to work on the Thames, in raising ballast.—Still neither of these exhibit the example which the laws ordain and require to be made: and sad experience has long taught us, that the latter of these punishments has been attended with an increase of all kinds of villainy.—How should it be otherwise? for how is it possible to conceive a more dreadful and dangerous school of iniquity, than a place, where villains from every part of the kingdom are brought into an intimate acquaintance? — where they are
connected

connected in wickedness as in suffering—and where even the young beginner, who, when he first arrives, not having lost all shame, might otherwise reform, is sure to be hardened by the companions with whom he associates, and to have every principle of humanity destroyed from within him.—He then comes forth, replete with mischief—and ten-fold more a villain than when he was saved from the gallows, to the no small detriment of the innocent public.

As for *transportation*, there might be some hope arise from it, if, as in former times, the laws were executed on those who return from it; but it has lately been the fa-

fhion to pardon this crime alfo, fo that the public is almoft left without any refource at all.

I myfelf have feen, and very lately, at a country affizes, two fellows, who ought to have been hanged the affizes but one before, (the one for an *highway robbery*, the other for a *burglary*) but reprieved; and having received his majefty's mercy, on condition of transportation—tried for *breaking prifon*, and for *being at large*, &c. They were both convicted, and condemned for this laft offence—and both again *reprieved*—to the no fmall edification, comfort, and encouragement of the profligate

fligate and mischievous of all denominations.

Throughout these papers, I have, as much as possible, avoided naming persons, times, or places. I have done this, because I mean not to be thought invidious with respect to individuals, but only to offer my sentiments, on subjects which I cannot but deem of the most serious consequence to society.

As for the subordinate means of preventing robberies—such as encouraging industry, lessening the numbers of ale-houses, public places of diversion, &c. — these things, as well as every other that can be said on the subject, are so

G obvious,

obvious, as almost naturally to suggest themselves to every person's mind that thinks at all. However, these points are well discussed in a pamphlet published by the late ingenious *Henry Fielding*, Esquire, printed for *A. Millar*, in the year 1751; intitled, "*An Enquiry into the Causes of the late Increase of Robbers,*" &c.—a book containing many learned and wise observations, and which I could wish to be read over carefully, by every order of magistrates within the kingdom.

But it is to be feared, that our disorder is got to such an height, that no palliatives will now avail; there must be an end of the *police* itself,

itself, unless the laws give it their support; and this can only be done, by a strict and faithful discharge of duty, in those who are called into the high offices of magistracy. Then will the laws be feared, the dispensers of them respected, our lives and properties be secured, and the honour of this kingdom vindicated from the aspersions of our neighbours on the continent, who look upon us as little better than a nation of *bandiditti*.

A *Judge* who can see a fellow-creature stand before him, under circumstances of the deepest guilt, and exposed to the severest punishment, without feeling the ut-

most pity and compassion, must be a monster in nature; little better must he be, who does not gladly embrace every opportunity of shewing *mercy*, where it can be done consistently with the safety and welfare of the public:—but, on the other hand, *these* ought to be uppermost in the Judge's thoughts; for where *these* are sacrificed in any degree, it is not *mercy*, but *folly* and *injustice*, to *reprieve*; and such *reprieves* having, no doubt, brought more to the gallows than they have ever saved from it, are not to be esteemed acts of *mercy*, but are a species of *cruelty*. The drawing in men to commit capital offences, under
a notion

a notion of *impunity*, is very mischievous, not only to the criminals themselves, but to those who suffer by their outrages. I cannot help thinking, that, *in foro conscientiae*, a Judge, who wantonly and causelessly releases a thief from the punishment of the law, is answerable*, not only for all the mischief

* The famous *Killigrew* is said to have come to court one morning, and on *King Charles the Second's* asking him — “What news?” — “Very bad,” said *Killigrew* — “there is a report, about town, that your *majesty* robbed and murdered a man last night in the street.” — “What mean you?” said the *King*. — “I mean,” replied the other, “that the man whom your majesty would pardon, against the advice of your best friends, hath committed the facts which I

mischief such a villain does afterwards, but also for all that may be done by others, who take advantage to offend from the example of such ill-grounded clemency.

There is also a great defect in the manner of passing *sentence of death* on criminals. It is for the good of the public that this should be done with the utmost solemnity, not only to impress the convicts with a due sense of their crimes, but also to convince them of the justice and rectitude of

“ mentioned, and all the world lays this business on your majesty.”—“Ods-fish,” quoth the King, “I am sorry for it—but I will do so no more.”

their

their sentence. Add to this, the infinite service it must be of, to impress also the minds of the standers-by with these things. But, instead of deferring the sentence till the end of the assizes, when the trials are over; instead of calling to the bar all the criminals at once, and addressing them in the most pathetic manner upon their several situations, that all who hear may be apprized of what the law is, and what are the consequences of offending against it—it is now too often the fashion to pass sentence on every criminal as he is convicted: and this with very little preface: so that by the desultory manner in which it is done,

and the frequent repetition of it, it becomes so familiar to the hearers, as to lose almost all its effect *, and one grand end of the Judge's office is sadly defeated.

* I can most truly say this from my own feelings.—I have frequently heard “ sentence of death ” passed on criminals—alas, too frequently!—in the manner here described; and it has passed with little more perceptible effect, either on myself, or on the rest of the auditory, than was excited by any other part of the proceedings.—But at the last *summer assizes* for the county of *Surrey*, I felt ready to sink with horror, and observed the like in many who were near me, when 15 or 16 *capital convicts* were placed before the *Judge*, and addressed with a degree of solemnity, and heart-felt awe, which commanded the deepest silence and attention, and which did the highest honour to the laws, as well as to the excellent *Judge* who then presided.—O SI SIC OMNES !

Forms,

Forms, considered abstractedly, or merely in themselves, are trifling matters—but when *relatively* considered, as adding solemnity and dignity to the *Judge's* office, are of very great and serious importance; and, perhaps, a *Judge* owes more of that veneration and respect, which is paid him by the multitude, to the forms observed on his approach, and at his appearance, than to any of his personal qualifications, however eminent these may be.—The dignity of a magistrate very mainly consists in the *forms* which surround him; therefore to depart from any of these, is to lessen his own importance, as well as that of his office.

office. This has been too much done by some, and I wish it may not be followed by others. A contempt of magistracy must be succeeded by a contempt of the laws themselves; therefore every man who wishes well to the laws, should be careful to maintain that consequence and dignity, with which the office he bears has wisely invested him, and without which, first his *person*, then his *authority*, will be despised.

What has been said in the foregoing pages, is more immediately applicable to *Judges* on the circuits. They are the magistrates who are appointed to carry justice into every remote part of England;

England; and on their due execution of their high and important office, the whole country must look for peace and safety: these are what every man has a right to enjoy, as far as the laws can ensure them to him; therefore, to rob those laws of their effect, by a careless, partial, or inadequate administration of them, is a breach of trust of the most dangerous and mischievous kind: notwithstanding this, such an administration of the laws has been long creeping in upon us, as the length of the gaol-calendars, more especially in the home counties, too plainly testify.—I know that many
other

other causes are invented for this, some even lay it upon the laws themselves—but no man has a right to do this, till those laws have been steadily, faithfully, impartially, and uniformly executed in every part of the kingdom. 'Tis this, and this alone, that can deliver us from the dreadful situation to which we are now brought, unexampled in former times—*bad tho' they might be, still these are worse.*—A general failure of attention, in our superior magistrates, to the vast importance of punitive justice, induces the wicked and profligate to become still more so; having so many chances in their favour, they
 very

very little concern themselves about
consequences—or, as a wise king said
 —“ Because sentence against an
 “ evil work is not executed speedi-
 “ ly—(and we may also say—*cer-*
 “ *tainly*) therefore the heart of
 “ the sons of men is fully set in
 “ them to do evil.”

As to the METROPOLIS, we may
 say of every part of it, as *Ju-*
venal says of *Rome*, in its worst
 estate—

————— *Qui spoliæ te*
Non deerit, clausis domibus postquam omnis ubi-
que
Fixa catenatæ siluit compago tabernæ.
Interdum et ferro subitus grassator agit rem,
Armato quoties tutæ custode tenentur
Et Pomptina palus, & Gallinaria pinus.
Sic inde huc omnes tanquam ad vivaria cur-
runt.

Qua

*Qua fornace graves, qua non incude catenæ ?
 Maximus in vinclis ferri modus, ut timeas, ne
 Vomer deficiat, ne marra & sarcula defint.*

*Felices proavorum atavos, felicia dicas
 Secula, quæ quondam, sub regibus atque tribunis,
 Vidêrunt uno contentam carcere Romam.*

SAT. iiii. l. 302—314.

Thus excellently imitated by
 Dr. Johnson——

In vain, these dangers past, your doors you
 close,

And hope the balmy blessings of repose :
 Cruel with guilt, and daring with despair,
 The midnight murd'rer bursts the faithless
 bar ;

Invades the sacred hour of silent rest,
 And plants, unseen, a dagger in your breast.

Scarce can our fields, such crowds at Ty-
 burn die,

With hemp the gallows and the fleet supply.
 Propose your schemes, ye senatorian band,
 Whose ways and means support the sinking
 land ;

Lest

Left ropes be wanting, in the tempting spring,
To rig another convoy for the king.

A single jail, in *Alfred's* golden reign,
Could half the nation's criminals contain :
Fair Justice then, without constraint ador'd,
Held high the steady scale, but deep'd the
sword;

No spies were paid, no special juries known;
Blest age! but ah! how different from our
own!

The cause of all this is one and
the same, both in town and coun-
try, viz. the *uncertainty* of pu-
nishment, and the almost *certainty*
of *reprieve*. That there are so
many executed in *London*, is very
shocking to be considered; but it
is more shocking still to conceive,
that, perhaps, not even a *few* of
those *many* would ever have suf-
fered,

ferred, if the multitude of *reprieves* that are granted to far the greater majority of convicts, did not take off the force of the sad examples which are made, so as to leave the chance of life at least *three* to *one* in favour of the guilty. How injurious is this to those who are executed ! How monstrous is it to take men's lives away under pretence of example, and yet do this with such a partiality, as to destroy the very end of their sufferings, by so far weakening the force of that example, as to render it void and of none effect !

I remember, and not very long ago, an instance of one villain who tried all he could (except murder)

murder) to get himself hanged, but he could not effect it.—He once succeeded so far, as to be *tied up* to the gallows at *Tyburn*; where an old comrade of his, just as the cart was going to be drawn away, called out to the *Sheriff*, that, “the man was innocent of the fact for which he was going to be executed, and that he (the said old comrade) actually committed the robbery himself, and hoped that the *Sheriff* would not execute a man wrongfully.” The *Sheriff*, very humanely, stopped the execution, and sent an account of this to the Secretary of State’s office: an order came, to carry the man back to *New-*

H *gate*;

gate; from whence he was soon after discharged. Thus was the famous *Patrick Madden* preserved for future mischief. His friend was hanged for a robbery the very next sessions.

After this, *Patrick* was tried for a very dreadful riot in *Moorfields*, and sentenced to seven years imprisonment in *Newgate*; was released from thence in the riots of 1780—he then went on with burglary and house-breaking, and took young fellows under his tuition, to bring them up to his vocation.—On one of his expeditions, with his pupils, into a shop, which they robbed, he was discovered, taken, and capitally convicted. Notwithstanding

withstanding this, he was reprieved for *transportation*—he was afterwards found at large, and tried for returning from transportation—of this he was convicted*, and again received sentence of death—he was *reprieved* again to be

* I have been told, since the publication of the *first edition* of this book, that there was a doubt, whether the evidence given on this trial, was sufficient to have convicted the *prisoner*, and that the *jury* suffered the bad character of the *man* to influence their minds too much when they found him *guilty*, which was the reason why he was afterwards *reprieved*.—He was proved to be in the *shop* when the boys committed the robbery, and, I believe, that nobody, who heard the *trial*, had the least doubt of his being concerned with them :—what *else* could have brought him there, at that *particular time*, is not easily to be conceived.

H 2 transported

transported—when on board the ship, he made an hole in the bottom of it, and in the confusion which this occasioned, he got on shore—was retaken, and brought to the bar at the *Old-Bailey*—where, instead of being remanded to his former sentence, he was told that he must be sent abroad.—He refused to accept this, “ unless they used him better, while he stayed in Newgate ; for,” he said, “ they had chained him to the floor, and if he was not to have more liberty, he would not accept of the offered mercy.” The (then) *Recorder* told him, that he should be executed as that day se’nnight. This abated the hero’s

hero's obstinacy and courage, brought him on his knees, and made him sue, in the most abject terms, for mercy. This was granted him.—After this, he was re-embarked for *Africa*: since which, various have been the reports concerning him. Some have said, that he was hanged at the yard-arm, for mutiny on board the ship at sea.—Others say, this report was groundless—for that he has since been seen at large in *England*.—What the truth is *, I know

* I have lately been informed, by a gentleman, who assured me that he was told it by the *Captain* of the ship in which this offender was at last transported, that he was carried and delivered at the place of his destination in *Africa*;

know not—but this every body must know, that *one* instance of this sort, must tend to harden more villains, than the execution of fifty people can dismay. It carries with it an instance of *partiality*, that is horrible in itself, as well as a very high reflection on the distributive justice of this country, which will not, and ought not easily to be effaced.

The account which is above given of this malefactor, I con-

that he made his escape from thence, and got to some of the *French* settlements, where he pretended that he came as an agent from the *Americans*:—his fraud was soon discovered, he was apprehended as a *spy*, and committed to prison. This was the last thing the *Captain* heard of him.

fefs

sefs to have recollected from the public prints ; and, although they are not always to be depended on with respect to particulars, yet, in general, I believe the above account to be true, having had a confirmation of the substance of it, from persons well acquainted with this sort of transactions.

The matter of *reprieve* is transacted differently in *London* and *Middlesex*, from what it is on the circuits. In the former, the criminals, after sentence, are remitted to the gaol, where they remain undetermined as to their fate, till the Recorder has made his report of their several cases to his Majesty in council. During this in-

terval, the various connections which the convicts have formed in life, as well as their natural friends, all set to work—one has, perhaps, a brother who is servant to some Member of Parliament, or a sister who is mistress to such a one, or perhaps to some greater man; in short, the *higher powers* are got at; and, by some means or other, the royal ear is abused—the royal mercy extended to the greatest villainies—and “respites,” “during his Majesty’s pleasure,” reduce the number of names in the dead-warrant to about one third of the capital convicts—these are hanged—the rest frequently, of late years, sent for further

further instruction, in all kinds of the most dangerous villainies, on board the *bulks* in the river Thames; till, at the expiration of their time, they come forth, abandoned to the last degree—no creature can think of employing them, and now their most accomplished wickedness is to be let loose on the innocent public; and, edged with desperation, no street, no road, no house, is safe from their terror.

In the several counties where the assizes are held by the Judges on the circuits, reprieves are the immediate act of the *Judge* himself; who must know the truth of every case that he tries, so that he cannot

cannot be imposed on by misrepresentation, or by false report: and this renders him the more inexcusable to the public, if he reprieves improperly. He has no power to alter the sentence from one thing to another, as from hanging to transportation: but he has a power to reprieve, which (that the criminal may *suffer* as little even *in mind* as possible) his Lordship usually does — “*before he leaves the town*.” — he then sends a recommendation to the Secretary of State’s office, of such and such persons, as fit objects of his majesty’s mercy; this is represented to the king, by whose command a letter is addressed to the
Judges

Judges of the next assize for the county, ordering such and such to receive his majesty's mercy, on condition of transportation, going to the hulks, or as the matter is, according to the report sent by the Judge. Whatever this may be, the end of the law is defeated—justice is laughed at—and the honest part of the king's subjects must suffer for the *injustice* and *folly* of such *reprieves*.

It has been before observed, that some Judges have reprieved, for many offences made capital by the law, such as horse-stealing*, sheep-

* I have just seen a printed *hand-bill*, from *Chertsey*, in the county of *Surrey*, signed by many

sheep-stealing, and the like, because it is against their *consciences* *

to

many gentlemen and farmers, complaining (as well they may) of the *daily increase* of SHEEP and HORSE-STEALING; and offering a reward of *twenty pounds*, to any person who shall be the means of convicting an offender.

This is one of those instances, which prove, how severely these mischiefs are felt by the public; as well as how great a cause that public has to complain, of those who turn such *miscreants* loose upon their fellow-subjects.

* Some have gone so far, as to doubt whether the *legislature* has a power to punish *horse-stealing*, *sheep-stealing*, or the like, with *death*, seeing that by the Divine Law, *Exod. xxii. 1—4*, such offences were punished by the offender's being compelled to make *full restitution*, or, if this was not done, he was *to be sold for his theft*. But, on this principle of argument, how is it that *forgery* (for instance) is punished with *death*, and the offenders *seldom*, if ever, *re-prieved*?

to take men's lives away for such offences as these. But how do such

priev'd? So, in the case of *mail-robbery*, in which I never remember an instance, where the offender was not *executed* after *conviction*.

However, the best answer which appears to me on the subject, is, that the scriptures, in no one instance, interfere with respect to the punishment of *criminals* by the magistrates of any civil government, according to the laws of that government. I think myself fully justified in asserting this, from the plain tenor of *St. Paul's* reasoning, *Rom. xiii. 1—7*, and again, from what the Apostle *Peter* says, *1 Pet. ii. 13, 14*. From whence, as well as from many other parts of the inspired writings, I conclude, that every *state* is left to consult the preservation of its own safety from violence and robbery, by such means as appear, from its own particular situation and circumstances, to be necessary or expedient; and, that every individual in that community, for whose protection the laws are

such men's *consciences* dispense with their solemn *oath of office*? They are here brought into a very serious dilemma—they have sworn solemnly to execute the laws †, but their *consciences* won't let them do this,—What then becomes of their *oaths*, which are given as securities to the public for the due execution of justice? Such a Judge ought to resign his place, and not

are made, is bound to be subject to them, *not only for wrath*, (i. e. for fear of the punishment which might follow the breach of them) *but—for conscience sake*. Nor can I see, that any man has a right to complain, for being punished for the breach of a law, which was made for his own safety and protection, be that law what it may.

† A Judge's *oath* respects the laws *as they are*—not as he may think *they ought to be*.

trifle

[III]

trifle thus with the law, with himself, and with his fellow-subjects, in matters of such weighty consequence.

What laws ought to be made, is the province of the legislative power alone to determine: but when once made, the executive magistrate is not to arrogate to himself an authority over them, so that they shall, or shall not, operate, according to the will and pleasure of an individual.—If the law be too severe in the opinion of the Judges, yet, it is plain that the legislature, when they passed it, thought otherwise, else it had not been made. But be the law what it may, none are answerable

for it; but those who make it; none are answerable *to* it, but those who violate it; and none are criminal, as to the dispensing it; but those who do not dispense it, fairly and impartially, to all, who are the plain, clear, and determinate objects of it.

It was worthy the understanding and policy of a low thief, to say to *Judge Burnett*, once, at *Hertford* assizes—"My lord, it is very hard to hang me for *only* stealing a horse."—It was worthy the good sense and wisdom of that learned Judge, to answer—"Man, thou art not to be hanged *only* for stealing a horse, but that horses may not be stolen."

This

—This answer I could wish the Judges to carry with them, whenever they go the circuit, and to bear it in their minds, as containing a wise reason for all the penal statutes which they are called upon to put in execution:—it at once illustrates the true grounds and reasons of all capital punishments whatsoever—namely, that every man's property, as well as his life, may be held sacred and inviolate.—This, thank God! is, in this country, the constant care of the legislature; and whoever counteracts this, deprives us of our common birth-right.

What is the end of all punishment? “To deter men,” says the

I

great

great *Judge Hale*, “ from the
 “ breach of laws, so that they may
 “ not offend, and so not suffer at
 “ all. And is not the inflicting
 “ of punishment more for exam-
 “ ple, and to prevent evil, than to
 “ punish?” “ and therefore,” adds
 he, “ death itself is necessary to
 “ be annexed to laws, in many
 “ cases, by the prudence of law-
 “ givers, though possibly beyond
 “ the single merit of the offence
 “ simply considered.”

The real difference between a
severe Judge (i. e. a *Judge*, who,
 with a view to prevent evil, suffers
 the law to take its course—for such
 a one is very commonly, though
 very injuriously, called *severe*) and
 a *merciful*

a merciful Judge (i. e. one who
 “reprieves all before he leaves the
 “town”) is this—the former is
 a terror to thieves, the latter to
 honest men:—which of these cha-
 racters may feed a low pride of
popularity among the unthinking
 vulgar, and particularly among the
 several gauls of the kingdom, we
 may easily determine—but which
 of these establishes peace and con-
 tentment of mind in a man’s own
 breast, and deservedly gains the
 esteem and approbation of all
 thinking, honest, virtuous, and
 good men, is, I am afraid, too
 little thought of, by some of those
 whom it most concerns.

As for the strange supposition,

I 2

that

that thieves don't mind *hanging*, it is too absurd almost to require a serious answer. However stupid their minds may have grown, however hardened by the daily practice of wickedness, with respect to *others*—yet there is a certain principle, which is very rarely eradicated, and that is a principle which respects *themselves*, I mean, SELF-PRESERVATION. — The fear of death applies to this, and immediately sets it to work, either more or less, according to the apparent danger which threatens: and I will be answerable for it, that there is no possible punishment which could be devised, short of death, or even that, if it held out only

only a faint chance of life, which the most daring thief would not thankfully accept, while under sentence of death.

I remember to have read an account which very fully serves to illustrate the above position; and of which the following is the substance, as well as I can recollect.— Many years ago, some ingenious person found out, what was called, a most sovereign *styptic*; it was said to be so efficacious, that no *hæmorrhage* could resist its power to stop bleeding. The inventor had tried it upon the amputated limbs of dogs, horses, asses, and other wretched animals, who were chosen to be the subjects of his

inhuman experiments. It was then recommended to the observation of the hospital-surgeons, under a notion of succeeding better than the usual methods of taking up the vessels in cases of amputation; besides the advantage it held forth, of saving the patients the excruciating torments which they endure from the usual practice of taking up and tying the vessels. However, the most eminent surgeons then in England did not chuse to venture the experiment on their hospital-patients; so that, after several applications to them from the inventor of the styptic, they declined substituting, what to them appeared an *uncertain,*

tain, for what they so long had found a *certain* method of stopping blood on the amputation of limbs.

At length the *inventor* found means of applying to the king (GEORGE II.) and to get a pardon for a criminal then under sentence of death in Newgate, on condition that such criminal would submit to an amputation of the thigh, in the thickest and largest part thereof, and to have nothing but the styptic applied to stop the bleeding.

There were, at that time, several convicts (if I remember rightly, seven or eight)—these were applied to, and each of them ear-

neftly petitioned to be the man on whom the experiment fhould be tried.—How this was decided I forget ; whether by lot—or by leaving it to the *inventor* of the *ftyptic* to chufe the man, who, from his appearance of health, and ftrength of constitution, might be fupposed to give the medicine the faireft chance—or however elfe it might be determined, the choice fell on one *Chippendale*, who chofe to undergo a moft horrible operation, with a bare chance of life, rather than meet a certain death, which, in point of bodily pain, could not be a thoufandth part of what he chofe to fuffer, for even the precarious hopes of life.

As

As soon as the man was fixed on, the surgeons were desired to be present at the operation, for which a day was to be appointed; but they all refused this, as well as to try the styptic in the hospitals, though it might succeed in the case of this man, or even of more; alledging, that they could not answer it to themselves, or to the public, if they should happen to lose a patient, by even an accidental failure of the styptic; and therefore, they were determined to proceed in the old method.

There was much altercation about this affair; and, at length, it ended in the fellow's saving both his limb and his life; for, as the
end

end of the experiment would not have been answered, by inducing the surgeons to try it in the hospitals, the inhuman operation on the criminal was interdicted, and he was discharged out of confinement, having, on his part, performed the condition of his pardon, by offering himself to the proposed operation.

One *fact* proves more than many *arguments*; and that person must know little of human nature, who can doubt, whether, if the same offer were to be made again to a gaol-full of capital convicts, they would not readily consent to save their lives at the expence of their limbs.

The legislature has therefore annexed *death* to the commission of certain crimes, as the most terrible of all punishments, and, of course, as the most likely means to stir up that horror in men's minds, which may deter them from perpetrating the evils that otherwise they would commit. That all this wise and salutary intention of the law is counteracted, and, in a great measure, defeated, by the ill-timed lenity of the Judge, is very true ; but then, instead of saying, that " men don't mind *hanging*, and therefore " some other mode of punishment should be adopted,"—let it rather be said, that " they don't
 " much

“ much mind a *chance* of hanging,
 “ which is twenty to one in their
 “ favour, and therefore let the
 “ law be so executed, as to leave
 “ nothing but a *certainty* of suffer-
 “ ing if they offend, and then the
 “ law will have its effect.”

Our law is not like the law of
Turkey, which, in many cases, owes
 its existence, as well as its pun-
 ishments, to the will and plea-
 sure of a *Bashaw* or a *Cadi*—and
 that, *ex post facto*, or after the
 commission of an offence:—but it
 is the glory of the English laws,
 that they, and the punishments
 which they inflict, are known and
 certain, as they stand in the law;
 therefore the robber knows before-
 hand

hand what the law gives him to expect, and so leaves him without excuse, if he makes himself an object of its punishment—he has nobody to complain of but himself. On the other hand, if the law, known and published as it is, be not executed, so that the punishments which it threatens become mere *bruta fulmina*, and persons are drawn into mischiefs from the hopes of impunity—tho' they cannot reasonably complain of the law, yet they have much reason to complain of those whose duty it is to dispense it.

Lord Bacon says, somewhere—that—“ It is no matter what the law is, so it be known what it
“ is.”

“ is.”—Still, let the law be ever so plain and determinate as to itself, if it be rendered *precarious* in its execution, and only put in force now and then, according to the temper, disposition, or humour of the *Judge*, it is thus (virtually at least) rendered *uncertain*, and may, with much shew of reason, be looked upon as very oppressive towards the comparatively *few* who suffer by it—the *many* who escape will laugh at it, and in a short time be brought to set it at open defiance; while the Public, for the defence, protection, and preservation of which it was made, have only to lament, that the ill execution of the law, leaves mankind

kind in little better condition, than if there was no law at all. And this seems to be the case at this very hour. What is more melancholy still, is, that robberies of all kinds are on the increase; and to no other fair reason can this be attributed, but to the increase of *reprieves*:—these, in the very nature of things, must weaken the *terror* of the *law*, and in proportion as they do this, must embolden and harden men to commit outrages, of the most disastrous kind, upon their peaceable fellow-subjects.

“ No man of common humanity, or common sense, can
 “ think the life of a man and a
 “ few

“ few shillings to be of an equal
 “ consideration ; or that the law,
 “ in punishing a thief with death,
 “ proceeds (as perhaps a private
 “ person sometimes may) with
 “ any view to vengeance. The
 “ terror of the example is the only
 “ thing proposed, and one man is
 “ sacrificed to the preservation of
 “ thousands.

“ If therefore the terror of this
 “ example be removed (as it cer-
 “ tainly is by frequent pardons)
 “ the design of the law is ren-
 “ dered totally ineffectual — the
 “ lives of the persons executed
 “ are thrown away, and sacrificed
 “ rather to the vengeance than to
 “ the good of the public ; which
 “ receives

“ receives no other advantage,
 “ than by getting rid of a thief;
 “ whose place will immediately
 “ be supplied by another. Here
 “ then we may cry out with the
 “ poet (*Claudian*)

—*Sævior ense*

Parcendi rabies.

“ This I am confident may be
 “ asserted, that pardons have
 “ brought many more men to
 “ the gallows than they have sav-
 “ ed from it. So true is that sen-
 “ timent of *Machiavel*, that ex-
 “ amples of justice are more *mer-*
 “ *ciful* than the unbounded exer-
 “ cise of pity.” See Fielding’s
 Incr. of Rob. p. 120.

Upon the whole, something

K should

should be done, or much worse consequences, than have hitherto happened, are to be apprehended*.
— As matters are at present conducted, the situation of this country bears a most alarming aspect ;

* A public print of November 9th, 1784, observes, that—" If robberies continue to increase, as they have done for some time past, the number of those who rob will exceed that of the robbed."

The author of the above paragraph may have credit given him, for meaning to speak *hyperbolically* ; but, as things are going on at present, the *hyperbole* is a very allowable one— for, he observes, that —" Every day, every hour, teems with intelligence of houses broken open, carriages stopp'd on the highway, and persons plundered and abused. These outrages are frequently committed early in the evening, and in the open streets of the metropolis.

alarming

alarming indeed! when, in many instances, the subject has too much reason to complain, that we are at present little better protected in our property, than if we had lived among the old *Ægyptians*, who held all manner of *thefts* to be *lawful*. See Aul. Gell. Lib. ii. c. 18.

Our *police*, as far as it relates to the discovery and apprehension of felons, is now on such a footing, that no thief, or nest of thieves, can long be safe. The plan of a public office, open at all times for the examination and commitment of offenders, is of the greatest use. This was first devised by the late *H. Fielding*, Esq;—much improv-

ed on by his late brother *Sir John Fielding*—and is now carried on, in a still improved state, by *Sir Sampson Wright*, and other gentlemen his assistants, in *Bow-street*. There are other *rotation offices* *, all of which contribute their quota of usefulness to the public; and,

* So called from the magistrates sitting *by turns* at a known place; so that there are always some present to do the public business:—this, I believe, has always been the custom in the *City of London*, where the *Aldermen* sit on justice-business by rotation at *Guildhall* every day.

This is a most salutary institution, and must tend to expedite justice. But quere—If this would not be very highly improved on, if there were *Judges* to sit in the same manner, to try the offenders as soon after their commitment as possible?

by

by means of the number of officers employed by them for the apprehending thieves, I much question whether a thief can be much safer in *England*, even in *London* itself, from the hands of the thief-takers, than he would be from those of the *Marechaussée* or *Guet* in *France*.

Our gangs of thieves are grown too numerous, and the individuals which compose them too desperate and dangerous, to be controuled by the comparatively feeble powers of the private magistrate, or of the common parochial constable. A steady execution of the laws might have preserved things on a better footing; but they are

now come to such a pass, that nothing but active magistrates, who devote their whole time to the one single object of the police—and bands of stout, able, and resolute officers, whose only business is to execute the warrants of those magistrates—can insure any tolerable quiet to the metropolis and its *environs*. Without these, there would be no living — therefore, they certainly are people to which the public is very highly obliged.

But how mortifying is it to think, that, after all the care, trouble, hazard, and expence, in the apprehending capital offenders, by the inferior magistrates, and officers of the police, these
villains

villains are usually caught, only to be turned loose again, either from gaol, or from the lighters, still more determined and desperate, as to every species of felonious mischief! This is so much the case, that it may be asserted, with great truth, though at the same time with no small scandal to the government, that there are many offenders, now at large, in the kingdom, who are as well known at the rotation offices, for having been tried and convicted of some capital crime or other, as *St. Paul's* clock is known for striking the hours.

I am rather deviating from my design in these pages, by entering

on the transactions of the police in the metropolis; but as these are very much connected with the business of the assizes, in the home counties especially, I could not pass them by.

Suffice it to say, that, if there were the same care taken to execute the laws in the *higher* departments of magistracy, as there is in the *lower*, such a check must be given to the licentiousness of robbers, as soon to bring on a new face of things. We should almost have to say—*redeunt Saturnia regna*:—What can effect this, but suffering the laws to take their course against those who are now setting them at defiance
—and

— and thus vindicating them from the reproach of those who revile them, as inadequate to the purposes for which they have been made?

One observation I must conclude with, which is—that all writers on the subject of laws, that I have ever met with—as *Plato*, *Cicero*, &c. among the antients; *Montesquieu*, the *Marquis of Beccaria*, &c. among the moderns—all contend for the certainty * of punishment, in order to render

* *Montesquieu*, Sp. L. p. 122. says — “ If
“ we enquire into the cause of all human cor-
“ ruptions, we shall find that they proceed from
“ the *impunity* of criminals, not from the mo-
“ deration of punishments.

laws respected and efficacious. The same reason for which a law is enacted, must certainly call for the certainty of its execution; for to enact a law, and not to enforce the execution of it, is against all reason.

I have professedly avoided entering upon the question—how far it might be expedient to revise our penal statutes, relative to capital offences? but, as a friend to examination and revival of all kinds, I should not be sorry to hear that such a thing was in agitation; for, if any of the laws in being fail of their execution, and consequently of their end and purpose, because they are thought too sanguinary,

fanguinary, they had much better be altered into something less severe, than to let those offences, which are the objects of them, go without any punishment at all.

However, this is a matter wholly for the consideration of the legislature; I shall therefore dismiss it, with my hearty good wishes, that if ever it be done, it may be productive of all that benefit to the public, which the warmest advocates for such a measure can expect or desire: at the same time expressing my own doubts, whether any other human system could equal the present, for the suppression of public injury, supposing the law as it now stands
were

were punctually executed. We then might say——

*The law hath not been dead, tho' it hath slept:
Those many had not dar'd to do that evil,
If EVERY MAN, that did th' edict infringe,
Had answer'd for his deed: now 'tis awake;
Takes note of what is done; and, like a prophet,
Looks in a glass that shews what future evils
(Either now, or by remissness new-conceived,
And so in progress to be hatch'd and born).
Are now to have no successive degrees,
But, ere they live, to end.*

See SHAKESPEARE, Meas. for Meas.

PART

P A R T II.

AS it is to the purpose of these papers, I would observe, that the *petty juries*, who are to stand between the Crown and the prisoners, notwithstanding the solemn *oath* by which they are bound, frequently acquit prisoners, in the very face of the clearest and most indisputable evidence.

The oath of a petty juryman is as follows, viz. “ You shall well
 “ and truly try, and true deliver-
 “ ance make, between our Sove-
 “ reign

“ reign Lord the King, and the
 “ prisoner ” (or prisoners) “ at
 “ the bar, whom ye shall have in
 “ charge, and a true verdict give
 “ ACCORDING TO THE EVIDENCE.
 “ —So help you GOD.”

The words of this solemn adjuration are very plain and intelligible to the meanest capacity, and very clearly point out to the juryman the whole of his duty. They confine his attention to the *evidence* before him, and they bind his conscience to deliver his verdict, simply, according to the conviction which *that evidence* works upon his mind.

Instead of this, juries frequently take upon themselves to give
 i verdicts

verdicts diametrically opposite to the evidence which has been delivered. I have often observed this, with much uneasiness; and indeed, that man, who can hear *twelve* people *perjure* themselves, and not be affected by it, must, one should think, be void of all feeling, of all *proper* feeling, at least, whatsoever.

For instance. A prisoner is set to the bar, and put upon his trial. The witnesses uniformly, and without a doubt, prove the *fact* against him. But perhaps he happens to be young—it appears to be his first offence—he has, before the fact which is proved against him, had a good character — he was
drawn

drawn in by others—was in liquor—or some other circumstance of the like kind strikes the minds of the *jury*; they forget their oath—“to give a true verdict according to the evidence”—and take upon themselves to *acquit* the prisoner, against all *fact* and *truth*. This I have so often seen, that I cannot forbear the mention of it. The Judge, on this occasion, usually takes little further notice of the matter, than to congratulate the prisoner on “his narrow escape,” and to tell him that “he has had a very *merciful* jury.

That such an acquittal as this is owing to the *perjury* of the *jury*, is beyond a doubt: they have given a verdict

a verdict *according* to their *feelings*, but *against* their *oath*. This may be a very dangerous business to the public ; for if a jury can give a *false* verdict in *favour* of a prisoner in one case, they may also give a *false* verdict, in another, in *prejudice* of the party accused. If through *favour* they acquit, through *prejudice* they may convict * ; and if so, their oath, which
is

* This I remember to have happened, in a very remarkable case, of a person of fortune, who was *maliciously* indicted for stealing *turkies*, and as *maliciously* convicted, at a certain *general quarter sessions* held in the borough of *South-work*. To behold a venerable figure of an old gentleman, above seventy years of age, standing at the bar, as a common *felon*, was, in itself, an

L

afflicting

is to be looked upon as the grand security to the public, as far as *juries* are concerned, is a nugatory piece of form.—I have observed this in so many instances, that, considering what sort of people

afflicting sight—but to see a *jury* capable of convicting him against *law*, as well as *fact*, contrary to the sense and direction of the court, was still more afflicting.

It seems, that this old gentleman was a good deal disliked in his neighbourhood; and there being, unfortunately, some of the *jury* literally *de vicineto*, they influenced the rest to find him *guilty*, and to persist in their *verdict*, though sent out of court to re-consider it.

This matter ended in an unanimous petition to our most gracious Sovereign, signed by all the magistrates, expressing their disapprobation of the verdict; which procured a pardon for the *defendant*.

petty

petty jurymen usually are, it ought to be looked upon as a part of the *Judge's* duty, to give them a proper *charge*, as soon as they are sworn; to warn them against trifling with their oaths; and to hold up the evidence given to them, as the *only* matter which they are to consider. If any party tried before them appears, from some alleviating circumstances of his case, to be an object of mercy, they may recommend him as such to the *Judge's* consideration, but ought on no account to violate their *oath*, from any motive whatsoever.

The *grand jury*, which is usually composed of gentlemen of rank

and education, and who must, from these causes, as well as from their repeated services, be presumed, in a good measure at least, to know their duty, always receive a *charge* from the *Judge*: how much more necessary is it for the *Judge* to instruct the *petty jury* in their duty, as they usually consist of low and ignorant country people!

Another cause of much evil is the trying prisoners *after dinner*; when, from the morning's adjournment, all parties have retired to a hearty meal; which, at *assize-time*, is commonly attended, among the middling and lower ranks of people, at least, with a

good deal of *drink*. The symptoms of this vulgar species of festivity are usually too apparent, when the court assembles in the *afternoon*—the noise, crowd, and confusion, which these occasion, seldom cost the *Judge* less than about an hour, before the court can be brought into any kind of order; and when this is done, drunkenness is too frequently apparent, where it ought of all things to be avoided, I mean, in *jurymen* and *witnesses*. The heat of the court, joined to the fumes of the liquor, has laid many an *honest jurymen* into a calm and profound sleep, and sometimes it has been no small trouble for his *fellows* to jog

him into the verdict—even where a wretch's *life* has depended on the event!—This I myself have seen—as also *witnesses*, by no means in a proper situation to give their evidence.

The remedy for these things would be very easy, as well as pleasant to the court: and that would be, to sit *early* in the *morn- ing*, and to make but *one* sitting for the day—suppose *seven* in *summer*, and *eight* at the *Lent* af- fizes.—The *Judge* might try more prisoners, and do more business, by these means, than by the usual adjournment, and having the con- fusion and disorders of the re- assembled court to combat with.

He

He might sit till *five* in the evening in the Lent circuit, and till *six* in the summer: which, by some refreshment brought to him into court, might be done, with less fatigue, and more satisfaction, as well to himself, as to all parties concerned, than can be derived from the present usual, but inconvenient method of proceeding.

Every body must see and know, that an *assize-town* is the common *rendezvous*, not only of many who have business there, but of *more* that have none; and that the majority of the *latter* is composed of the low rabble, gathered from within some miles of the place, for the purpose of making holiday.

day. It is by this sort of persons that the crowd is made; and when they wax drunk, which they seldom fail to do by the *evening*, their noise is intolerable, their rudeness hardly restrainable, and their curiosity *will* be satisfied, by their forcing themselves into and about the court, which they fill with “the most villainous compound of ill smells that ever offended nostril.”—The scheme of making but one session in the day, and of adjourning early in the evening, would prevent all this, as well as maintain that *decorum*, with which a due respect to a court of justice is so intimately connected.

There

There has of late years been a law made *, for “ preserving the
 “ health of prisoners in gaol, and
 “ preventing the gaol distem-
 “ per.” A very necessary and ex-
 cellent statute it is; but there is
 a part of it, which, by too strict
 and literal an observance, may
 bring some inconveniences on the
 public. This law says—that the
 Justices, in their quarter sessions,
 “ may order cloaths to be provid-
 “ ed for the prisoners when they
 “ see occasion.” It is therefore
 now become customary, to take
 off the prisoner’s own cloaths, and
 put him on a dress like a carter’s
 frock; and in this habit he is

* 14 Geo. III. cap. 59.

brought

brought on his trial—the reason of which is supposed to be, that the *Judges* and *court* may be secure from all danger of the *gaol distemper*, which might possibly be communicated by the cloaths of the prisoner: this, supposing there be any infectious disorder in the *gaol*, may be a wise and salutary precaution — but I have known it often done, when, as appeared by the certificate of the county-surgeon, pursuant to the said act, there has been no *gaol* or other *infectious disorder* whatsoever. There can be no reason, when this is the case, to change the prisoner's apparel, or disguise him when brought up to trial;
but

but there are very strong reasons why this should be avoided, for the sake of justice. The prosecutor and witnesses may be much puzzled to know a man, when disguised in a carter's frock, so as to be able to swear to him; his dress when he committed the fact should therefore, if possible, be that in which he should stand at the bar, as most likely to mark the identity of the prisoner.

I have seen a number of men arraigned in their own cloaths, and the *Judge* has ordered them to be brought to their trials, as they severally should come on, in the cloaths of the gaol, which are usually (as has been said) carter's frocks.

frocks. I observed, that these made such a difference in the appearance of the prisoners, that I hardly knew them again; this, however immaterial to a stander-by in court, is yet very material to those who are to appear as witnesses in the cause, and who may be very much embarrassed in their testimony, respecting the identity of a person under such different appearances; for, not only the cloathing is different in shape and colour, perhaps, but the person and stature seem to a great degree altered by it.

When therefore there is no reason for it, surely such a disguise should be omitted.

It

It may not be foreign to our purpose, to make some observations on another, and more important method of *escape* for *thieves*, when put on their *trial*. The *facts*, charged against them in the *indictment*, are then to be made out by *legal* testimony.

It often happens, that *robberies* are committed by *more* than *one* offender—that the *prosecutor* is able to swear positively to the fact, and to all its circumstances, as well as to the *number* of villains who committed it; but can't bring it home to the *prisoner*, not being able to *identify* him by swearing to his *person*; so that, for want of some direct and positive testimony
against

against him, the *offender*, however great a villain, is *acquitted*.—To remedy this sore evil, it has been found necessary, and it is customary, to admit one of the *accomplices* an evidence for the Crown; but it is usual to reject the *accomplice* from being a witness, unless some other testimony appears, to put the prisoner on his defence, by way of inducement, or introduction, to the *accomplice's* evidence.

As this is a very serious matter, and big with the utmost distress and danger to society, it may be worthy our attention.

Let us first observe, in general, that there are certain *legal* objections,

jections, which may be made to a witness ; *some* of which go to his *competency*—*others* to his *credit*.

By the *first* of these, he cannot *legally* be sworn as a *witness* ; as where he is a *felon* convict, or has been convicted of *perjury*, or stood in the *pillory* for some infamous crime, or the like, or is *interested* in the cause—such a one is *incompetent* to be a *witness*, and therefore must be totally set aside.

But though the *witness* be under none of the *above*, or any *other* disabilities, with respect to his *competency* ; yet there may be many circumstances, which may tend, very strongly, to impeach the truth and *credibility* of his testimony

mony—as, if he prevaricates, or contradicts himself in what he says—or is in a different story at different times—or appears to be a person of bad fame—or betrays any heat or malice against the prisoner: in these, and many other particulars, a witness stands greatly impeached in his *credit*; and the *jury* ought to be cautioned against trusting him, unless some very strong and probable circumstances appear, in favour of his testimony against the *prisoner*.

Now, what is the case of an *accomplice*?—If he be not rendered *incompetent*, by standing under some *legal* disability, he cannot necessarily be rejected as an inadmissible

missible *witness*, though no other should appear to charge the *prisoner*.

How far the testimony of an *accomplice*, as immediately affecting the *prisoner*, is to be *credited*; is a matter to be left, like *all other* testimony of *all other* men, under the direction of the learned *Judge*, to the *jury*. The predicament under which the *accomplice* stands, must go very strongly against his *credit*, therefore every thing that he says should be received with the utmost caution. The *manner* of giving his evidence, the *matter* of it; the consistency or inconsistency, as well as the probability or improbability,

lity, together with all circumstances relative to it, are such objects of even a common share of understanding and discretion, as leave no room for either *Judge* or *Jury* to mistake.

It has been said—that, “an *accomplice* is an *interested witness*.” If so, it goes to his *competency*, and he ought not to be sworn *at all*, though twenty other witnesses appear in the cause. But how is he *interested*? When once he is admitted an evidence, whatever be the fate of that evidence, he is sure to be safe; unless, perhaps, he be detected in open falsehood, and then he may suffer: if, therefore, he can be said to be *interested*
at

at all, it must rather be to speak the *truth*, than, by prevarication and falsehood, to subject himself to detection and punishment.

“ Under such circumstances, and under the caution of a good *Judge*, and the tenderness of an *English jury*, it will be highly improbable, that any man should be wrongfully convicted; and utterly impossible to convict an *honest* man: for I intend no more, than that such evidence shall put the *prisoner* on his *defence*, and oblige him either to controvert the fact, by proving an *alibi*, or by some other circumstance, or to produce some reputable person to his character.”

rafter.”—See *Fielding, Inc. of Robb.*
p. 116.

The way in which *Lord Hale* * puts the matter is thus—“Tho’
“ a *particeps criminis* be admissibile
“ as a witness in *law*, yet the *cre-*
“ *dibility* of his testimony is to be
“ left to the *jury*.” Here this
great man lays down the *law* as
stated above, viz. that an *accomplice*
is a *legal, competent* witness,
and in *law admissibile*. 2dly, That
his credit ought to be left to the
jury.—But if an *accomplice* be not
admitted at all, how can the cre-
dit of his testimony be left to the
jury? or how can the *jury* judge

* Hale, Hist. Vol. i. p. 305.

any thing concerning testimony, which they are not permitted to hear?—His *Lordship* proceeds—

“And truly it would be hard to
 “take away the life of any per-
 “son, upon such a witness that
 “swears to save his own, and yet
 “confesseth himself guilty of so
 “great a crime*, unless there be
 “also very considerable circum-
 “stances, which may give the
 “*greater credit* to what he swears.”

Here that excellent *Judge* speaks like himself, with that good sense, tenderness, and humanity, for

* By this it is clear, that his *Lordship* did not at all mean to exclude the *single* testimony of an *accomplice*, but to express the proper caution with which it should be received.

which he was remarkable. But there is a wide difference between the practice of *rejeſting totally the ſingle evidence of an accomplice*, ſo as not even to put the priſoner on his *defence*; and the *taking away his life* on the bare evidence of an *accomplice*, without “any other very conſiderable circumſtances.” The *former* muſt, in the very nature of things, contribute to the ſuppreſſion of *juſtice*, in the acquittal of the *guilty*; as, I freely acknowledge, the *latter* might tend to the deſtruction of the *innocent*.

What the learned *Chief Juſtice* ſays, of the *accomplice* “ſwearing to *ſave his own life*,” appears to be

be more applicable to the absurd and barbarous doctrine of *Approvers*, than to the custom of later days — where an *accomplice* is*, *ex necessitate rei*, admitted an

* The admission of the *accomplice* as an evidence, is done for the sake of bringing offenders to justice. It is a discretionary act of the *magistrate*, before whom the offenders are brought. If it appears to him, that the chief perpetrators of the *fact* cannot be *convicted*, unless an *accomplice* be admitted as evidence for the *Crown* against them, he usually singles out one, that he thinks the *least guilty* of the *gang*, for this purpose, and who appears to him to be well acquainted with the *fact*, as well as with the *identity* of those who committed it, in order to strengthen the otherwise deficient proofs against them.

The man thus admitted an *evidence*, is sent to *gaol* till the next *gaol delivery*, and then is brought forth to give his testimony.

M 4 evidence:

evidence: if the *approver* failed in his charge against the *appellee*, in *treason* or *felony*, he himself was to be hanged; therefore he might be truly said to swear to *save his own life*. But this is not the case of the *accomplice*, when admitted an *evidence* for the *Crown*: no such consequence is in the least likely to attend him, whichever way the *verdict* goes; therefore he cannot be under the influence of such an apprehension.

That an *hundred guilty* persons should escape, sooner than *one innocent* person should suffer, I readily agree—the very thought of *injured* innocence, and much more that of *suffering* innocence, must awaken

awaken all our tenderest and most compassionate feelings, and, at the same time, raise our highest indignation against the instruments of it, as well as our utmost care to prevent it. But there is no danger of *either* from a strict adherence to the laws. The admission of *legal* evidence will tend to nothing else, but to the discovery of truth; the judgment which is to be formed on that evidence, be it what it may, is to be the result of cool deliberation and reflection, and to be very cautiously determined.

Still, on the other hand, as the *public* must suffer very essentially from the escape of the *guilty*, it surely must be a *prudent* part, at least,

least, to hear what the *accomplice* has to say, so far as to put the prisoner on his defence—and more especially, as no man can tell, what *lights* may be struck out, or what *truths* may appear, from the testimony even of the worst of men. I own, that the matter appears to me, like administering a medicine, which may possibly do *good*, without the least probability of doing any *harm*.

I have written more on this subject than I at first intended; but its importance excuses me to *myself*, and will, I hope, excuse me to the *reader*. — As it is one of those things, which give much encouragement to *thieves*, to per-

suade themselves that the evidence of an *accomplice* will not be admitted against them, provided they can conceal themselves from the knowledge of others; and as every thing that can flatter them with impunity, increases their numbers * and audaciousness; I do hope and trust, that what has been said on this point, will be condescendingly attended to by THOSE WHOM IT MAY CONCERN. I know that they love to do right—they wish to do it:—to such, *advice* is ever welcome, and

* *Quod caput audaciæ est, JUDICES! quis ignorat, Maximam illecebram esse peccandi impunitatis spem?* CIC. *pro Mil.*

even

even *reproof* itself will be received with thanks.

The times require, that every *legal* and *constitutional* advantage should be taken against those who make themselves a *public terror*, by openly waging war on the *public safety*; and no opportunity of making proper examples of them should be lost.

———*The base degen'rate age requires
Severity, and justice in its rigour :
This arwes an impious, bold, offending world,
Commands obedience, and gives force to laws.*

ADDISON, CATO.

POST.

P O S T S C R I P T.

W H I L E the foregoing sheets were in the press, and nearly printed off, I happened casually to cast my eye into the *ninth volume* of *Sheridan's* edition of *Swift's* works, and found a paper (p. 320) intitled, "The last speech and dying words of *Ebenezer Elliston*, who was executed May 2, 1722. Published at his desire, for the common good."—No man knew *human nature*, as it appears and operates in all ranks and conditions of men, better than *Swift*, and, of course,

course, we find *touches of the master* throughout the whole of this little performance : in none more than in the following *paragraph* ; which, as it so fully coincides with the sentiments in the preceding pages of this book, I will transcribe.

“ From the knowledge I have
 “ of my own wicked disposition,
 “ and that of my comrades, I give
 “ it as my opinion, that nothing
 “ can be more unfortunate to the
 “ public, than the mercy of the
 “ government in ever pardoning
 “ or transporting us ; unless when
 “ we betray one another, as we
 “ never fail to do, if we are sure to
 “ be well paid, and then a pardon
 “ may do good : by the same rule,
 “ that

“ that it is better to have one fox
 “ in a farm than three or four.
 “ But we generally make a shift
 “ to return after being transport-
 “ ed, and are ten times greater
 “ rogues than before, and much
 “ more cunning.

“ Besides, I know it by expe-
 “ rience, that some *hope* we have
 “ of finding *mercy* when we are
 “ tried, or after we are condemn-
 “ ed, is always a great *encourage-*
 “ *ment* to us,” &c. &c.

A P P E N D I X

T O

“ Thoughts on Executive Justice,” &c.

O C C A S I O N E D B Y

A CHARGE given to the GRAND JURY
for the County of SURREY,

AT THE LENT ASSIZES 1785,

By the Hon. Sir RICHARD PERRY, Knt.

One of the Barons of His Majesty's Court of
Exchequer.

*—immedicabile vulnus
Euse recidendum, ne pars sincera trabatur.*

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A P P E N D I X

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A P P E N D I X

TO

"Thoughts on Executive Justice," &c.

THE preceding little publication, owed its rise to the most sincere wishes for the public good. It was sent forth, with a desire of awakening, in the minds of THOSE WHOM IT PRINCIPALLY CONCERNED, a very serious attention to the distresses of their fellow-subjects, under their present *increased*, and still *increasing*, state of danger, from

N 2

depredation

depredation and robbery.—It was intended to lead to *one sad cause* of these, which arose from too great and indiscriminate an indulgence of those amiable, but ill-timed, exertions of lenity and compassion, which had so long been turned into incitements and occasions of evil, in the minds of wicked and profligate men; such as, having abandoned themselves to all manner of wickedness, had so far got the better of every motive and encouragement to the common duties of humanity, as to make themselves the public terror of all honest and virtuous people.

It was intended to recommend such an exertion of *punitive justice*,

as

as to enforce that by *example*, which could not be effected by *precept*—To call in aid the laws of this country, for the security of the innocent and injured public—To lessen the number of crimes, by deterring men from the commission of them; and, by a certainty of punishment, to take away those inducements and allurements to evil, which so frequently are derived from a too-well founded *hope of impunity*.

It was to shew, that, whatever can induce men to the commission of crimes, must, in the end, bring them to destruction; that, therefore, rendering the punishments of the Law *uncertain*, must, by inducing men to commit crimes, in

the end bring them to destruction; and that, for this reason, however the reprieving and pardoning convicts might, on the particular instant, bear the semblance of *mercy*, yet it was the highest *cruelty* to all who were encouraged to offend, and thus brought *at last* to *feel*, what they imagined they had little *reason* to *fear*.

That not only those, who had received *mercy*, were induced to go on in their evil courses, but that many were drawn in to venture upon the like, by the hope which they themselves conceived from the *impunity* of others.

That *reprieves* and *pardons* had brought more to the *gallows*, than they

they had ever saved from it—and that, on this account, as well as on that of the insulted and suffering public, a steady, impartial, dispassionate execution of the laws, must be the only means, by which the public safety can be insured, or the persons and properties of individuals be protected.

In short, the whole, at least the principal arguments in the said publication, may be collected into the small compass of the following syllogisms.

I.

That system of police is the least likely to prevent crimes, which holds forth an *uncertainty* of punishment.

N 4

But

But our present system of police holds forth an *uncertainty* of punishment.

Therefore, our present system of police is least likely to prevent crimes.

II.

That system, &c. is the most *merciful*, which is the most likely to prevent the commission of capital offences.

But that system which holds forth a *certainty* of punishment, is the most likely to prevent the commission of capital offences.

Therefore, that system, &c. is the most *merciful*.

The

The above contain the principles, and chief arguments, of the *book*: these are illustrated by various anecdotes, by way of examples; and the conclusion to be gathered from the whole is, that the very *police* itself must sink into contempt—the whole kingdom be over-run with *banditti*—and the lives and properties of the sober, industrious, and virtuous part of the community be left in the hands of those, who are the declared and avowed enemies of every principle of law, justice, and even of common humanity.

To step forth, therefore, in the cause of public safety, to apply, in the most earnest manner, to those

SUPERIOR

SUPERIOR MAGISTRATES, to whose care is committed the administration of public justice, and on whose exertions of their great abilities as *men*, as well as of their high and salutary powers as *magistrates*, our ALL must depend, cannot, I should humbly hope, have so unfavourable a construction put upon it, as to ascribe it to any other motive, than to such as becomes, what the author has styled himself in his *title-page*, A SINCERE FRIEND TO THE PUBLIC.

It was some pleasure to the *author*, to find, that his little, well-meant performance, had been in some measure attended to, by those to whose judgment it had been submitted,

submitted *, and to whom it had been particularly addressed. It had the honour of being noticed, in the *Charge* which was delivered to the *Grand Jury*, by a learned and worthy Judge, Mr. BARON PER-
RYN, at the late *assizes* for the county of *Surrey*.

And here I would observe, that *Charges to Grand Juries* are matters of much higher importance, than, of later times, they have been made: the wisdom of our ancestors in their institution, from very early times, has been handed down to us; and two very weighty reasons

* The Author thought it his duty to send a copy of the pamphlet to each of the twelve Judges.

may

may be supposed for the original of *Charges to Grand Juries*.—First, That they should have delivered to them, on the best and highest authority, that of a learned Sage of the Law, the whole of their duty (as defined and limited by the laws of the land) for the due execution of that awful and solemn trust with which they are invested, as appointed to stand between the *Crown* and the *Subject*, in the investigation of those offences where life and liberty are concerned, so as to determine whether these *shall*, or *shall not*, be put in question at the *Bar*.

As these *higher inquests* are usually composed of gentlemen of rank and

and education in the county, the subject is so far safe : — because such persons may be presumed to be above every other consideration, than that of the most disinterested and impartial justice : but the study of the Law, and, consequently, an accurate and intimate acquaintance with it, is usually far removed from the enquiries and pursuits of men in the higher and independent stations of life : it is, therefore, highly expedient, that the *Judge* should inform them, not only of the nature and design of *Grand Juries*, but, by expatiating on the Law relative to the offences to be brought before them, as they appear in the *Calendar*, to make their

their duty easy and plain; with respect to their *finding*, or *not finding*, bills against such of their fellow-subjects as may become the objects of their enquiry.

I am sorry to say, that the beaten track of multiplied and repeated offences of the same kind, such as *highway robberies, burglaries, horse-stealing*, and the like, leaves very little new matter for the *Judge* to expatiate upon; and therefore he may certainly deal in general terms, without troubling himself to descend to particulars on these heads, as far as the *Grand Jury* is concerned. But,

Secondly, Let us remember, that the *Crown Court* is usually thronged,

thronged, on these occasions, with by-standers of various descriptions—among the rest, no doubt, with profligate and thoughtless people, who might reap an essential and lasting benefit from an able and well-delivered *Charge*:—The offences then to be tried—the punishments which the Law has annexed to them—and the dreadful consequences of all departures into the ways of vice, dishonesty, and rapine, might be mentioned in such a manner, as to leave a most salutary impression on the minds of the hearers, and determine many to the side of sobriety and *virtue*, if from no higher principle, yet from the fear and dread of that punishment,

which

which must be met with in the ways of wickedness and vice. One *convert* thus made, would do more honour to the *Judge*, and give him more heart-felt satisfaction, could he be acquainted with it, than can well be imagined.——Therefore it were to be wished, that a *Charge* were always conceived and delivered, with a desire and hope of this sort.——

But I am digressing from the main purpose of this Appendix.

The *Learned Judge* began his *Charge*, with a solemnity and decency well becoming his own situation, as well as that of the *Gentlemen* impannelled on the *Grand Inquest*, who now stood before him.

After

After some prefatory matter,
his *Lordship* assigned "his first ap-
pearance on the *Home-Circuit*,
" as a reason for his wishing to
" detain them some time longer,
" than he otherwise might have
" done, while he acquainted them
" with his sentiments on the causes
" of the increase of robberies, and
" other depredations on the pub-
" lic."

His *Lordship* mentioned, as one
probable cause, the " disbanding
" so many soldiers, sailors, and
" militia-men, which must be the
" case after a war. That these
" people * might not perhaps rea-
" dily

* The *Learned Judge* could not be supposed
to be apprized of it, but I was informed by one

“ dily find employment, or did
 “ not seek for it, and thus, from
 “ an idle and mischievous disposi-
 “ tion, were easily tempted to the
 “ commission of crimes.”

Another cause of evil, and which
 his *Lordship* stated with a becom-
 ing seriousness, he imputed to the
 “ grievous profanation of the *Sab-*
 “ *bath-day*; to the multitudes of
 “ public houses of amusement,
 “ dissipation, and drunkenness,
 “ which were opened for the re-
 “ ception of the lower kind of
 “ people; that in these houses
 “ were to be found the dissolute
 “ and profligate of both sexes;
 “ and many a poor youth had

of the *Grand Jury*, that there were not any pri-
 soners of these descriptions in the *Calendar*.

“ been

“been seduced, by the company
 “which he met with at such
 “places, into the commission of
 “crimes which brought him to
 “the gallows.”

His *Lordship* might here, with too much reason, have gone further, and have observed, that the profanation of the *Lord's Day* is by no means to be confined to the *lower* classes of the people, but, as these are fond of imitating their *bettors*, many of them, as servants in some great families, may at first be supposed to have learned to despise and profane the *Sabbath*, from the neglect and contempt of all religious ordinances, which they must have seen constantly before

their eyes, in the profligate examples of their masters and mistresses.

His Majesty's proclamation against vice, profaneness, and immorality, had just been read, of which his *Lordship* made a very pertinent and sensible use:—He mentioned, with a becoming zeal, *His Majesty*, “as *himself* being a bright example of what that proclamation required, and, in his private and domestic life, as a pattern well worthy the imitation of his subjects.”

I would here observe by the way, that, of all our national sins, that of profaning the *Lord's Day*, even in a *political* view, is one of the most

most dangerous.—What security can we have for the honesty of tradesmen, for the fidelity of servants, for the obedience of children, or, in short, for the observation and performance of those civil and relative duties, which are essential to the peace, comfort, and happiness of our common life, if men have all religious awe, all reverence of religious obligations and ordinances, eradicated from their minds, so that they are taught to live *without God in the world?*

What must the lower kind of people think, when they see *coach-fulls* of the nobility and gentry, either purposely travelling the

roads on a *Sunday*, or whirling about from one assembly to another; thus making it a time of amusement and recreation——totally regardless of the respect and honour which is due to the day? What are the opinions, which servants in great families must form, of the importance of religious observances, as means to solemnize the minds of men, when they too often see their masters and mistresses pay no regard to them whatsoever; and not only this, but even worse, when they see them trodden under foot, and even laughed at?

Can we wonder then, that the servant, when out of place, having
been

been taught to * cast off all ties of religion, should have a conscience void of sacred obligation?—that

* *Juvenal*, at the end of *Sat. ii.* attributes all the vices of *Rome*, which he has made the subject of that Satire, to infidelity and irreligion; he tells us that the very *children* were led into these at an early age.

*Esse aliquos manes, et subterranea regna,
Et contum, et Stygio ranas in gurgite nigras,
Atque unâ transire vadum tot millia cymbâ,
Nec pueri credunt, nisi qui nondum ære lavantur.*

L. 149—152.

To what dire cause can we assign these crimes,
But to the reigning Atheism of the times?

Ghosts, Stygian lakes, and frogs with croaking note,

And *Charon* wafting souls in leaky boat,
Are now thought fables, to fright fools conceiv'd,

Or children, and by children scarce believ'd.

TATE.

he should easily be prevailed upon, to shew his comrades the way into his master's house, and direct where to find the richest booty ?

Another matter mentioned in *His Majesty's* proclamation, is *profane cursing and swearing* : this foolish, unprofitable, yet daring insult on the name and holiness of the *Almighty*, is another crying sin among us — and is not only evil in itself, but much tends to promote and strengthen those evil habits, which, sooner or later, plunge men into perdition. In this respect, the lower kind of people receive much countenance and encouragement from their *bettters*, if *bettters* they may be styled, who

who put themselves on a level, as far as blasphemy and profaneness can do it, with *thieves* and *blackguards*.

Another source of evil mentioned in the proclamation, is of as disastrous a nature, with regard to the morals of men, as can well be conceived ; that is to say, *Gaming*. — This is a *vice*, which seems now to have taken full possession of people of all ranks and degrees * :

And

* *Et quando uberior vitiorum copia ? quando
Major avaritiæ patuit sinus ? Alea quando
Hos animos ? neque enim loculis comitantibus
itur*

*Ad casum tabulæ, positâ sed luditur arcâ.
Prælia quanta illic dispensatore videbis
Armigero ? Simplexne furor sestertia centum
Perdere, et horrenti tunicam non reddere ser-
vo ?*

Juv. Sat. i. l. 87—93.

What

And the only difference of its effects, on its votaries, seems to be this:—it brings many of the *higher* fort to ruin, which ends in a *gaol*—of the *lower*, into habits of idleness and want, which end at the *gallows*. As for those whose privileges protect their persons—their ruin tends to reduce them to a state of meanness and venality, which renders them disgraceful to their

What age so large a crop of vices bore,
Or when was avarice extended more?
When were the dice with more profusion thrown?
The well-fill'd fob not empty'd now alone,
But gamesters for whole patrimonies play:
The steward brings the deeds which must convey
The lost estate: What more than madness reigns.
When one short sitting many hundreds drains,
And not enough is left him to supply
Board wages, or a footman's livery?

DRYDEN.

rank

rank as *men*, and dangerous to their country as *senators*.

In vain do the laws remonstrate against this most pernicious evil:—those who can set at defiance obligations of a more important nature, pay no regard to human authority; and hence it is that *gaming-houses*, of all sorts, are open for the reception of all, who are thoughtless and profligate enough to attempt the *ruin* of *others*, at the hazard of *their own*.

But I digress——

The learned *Judge* then observed, that “ the *lenity* of the *Judges*,
 “ and the frequency of *reprieves*
 “ and *pardons*, had been assigned,
 “ by some, as reasons for the in-
 “ crease

“crease of robberies:” he said,
 that “he was induced to mention
 “this, on account of a late publi-
 “cation, in which the learned au-
 “thor had laid it down for a max-
 “im, that, except where the evi-
 “dence was not satisfactory, and
 “in some other instances mention-
 “ed in the book, *Judges* ought
 “to execute all they convict.—
 “This,” adds the *learned Judge*,
 “would be making our laws like
 “the laws of *Draco*, which, from
 “their severity, were said to be
 “written in blood.”

It is no small disadvantage to a
 work, to be held forth for judg-
 ment, as to its real intention, from
 a mention of a detached paragraph,
 or

or of a single and unexplained proposition. From the manner in which the *learned Judge* did this, the auditory must conclude, that the author must be a very cruel and blood-thirsty person, who wished for laws of the most *sanguinary* kind, to be executed with the most unrelenting severity, wherever the *conviction* of an offender could afford an occasion.—Nothing could be farther from his thoughts !

In the first place, I would answer, that no where, throughout the whole book, is the *Judge's* power of *reprieve* denied, or found fault with, but where it is exerted *wantonly* and *indiscriminately*, as well as *inconsistently* with the *public good*.

Where

Where *Judges* indulge their *feelings* as *men*, so far as to forget their *duty* as *magistrates* (in whose hands the administration of justice is placed by the constitution, for the *good of the whole*) there the public suffers in the escape of offenders from punishment — because, this not only tends to the encouragement of those who are already embarked in villainy, but to draw others in to the commission of crimes from the hope of *impunity*, which such ill-timed lenity holds forth to them. As to the position itself, “that *Judges* ought to execute all they convict, except in a few cases,” it stands very fully explained (p. 83) in the following words—

“A *Judge*, who can see a fellow-
 “creature stand before him, under
 “circumstances of the deepest
 “guilt, and exposed to the severest
 “punishment, without feeling the
 “utmost pity and compassion,
 “must be a *monster in nature*:
 “little better must he be, who does
 “not *gladly* embrace every oppor-
 “tunity of shewing *mercy*, where
 “it can be done consistently with
 “the safety and welfare of the
 “public. But, on the other
 “hand, these ought to be upper-
 “most in the *Judge’s* thoughts;
 “for where *these* are sacrificed, in
 “any degree, it is not *mercy*, but
 “*folly* and *injustice*, to *reprieve*;
 “and such *reprieves*, having, no
 doubt,

“doubt, brought more to the gal-
 “lows than they have ever saved
 “from it, are not to be esteemed
 “acts of *mercy*, but are a species
 “of *cruelty*: drawing in men to
 “commit capital offences, under
 “a notion of *impunity*, is very mis-
 “chievous, not only to the cri-
 “minals themselves, but to those
 “who suffer by their outrages,”
 &c.

I would also refer the Reader to
 p. 51, 52, 53, where the *Judge*’s
 power of *reprieve* is not only al-
 lowed, but acknowledged with
 thankfulness: and many instances
 are mentioned, and others alluded
 to, where the *Judge* ought to exert
 this power, and where, if he does
 not,

not, he cannot be said to execute
judgment in mercy.

How is this making our laws
like those of *Draco*?

To those instances alluded to
(p. 52) I have thought, since the
publication of the book, that I
might have particularized one,
which is of very great consequence,
in favour of *reprieve*—and that is,
where the offence may come with-
in the *letter* of the law, but not
within the apparent meaning and
intent of it, as to the *capital* pu-
nishment which it inflicts. Here
it may be right for the *Judge* to
direct the *Jury* to acquit the pri-
soner; but if not this, yet to *re-
prieve* the offender, that he may

P undergo

undergo a slighter punishment, and one more adapted to the nature of his crime, than could be derived from the rigour and severity of the law itself.

To illustrate my meaning, I will relate the following case. On one of the circuits, a poor fellow was indicted, and convicted of *burglary*. The case was, that as he was walking along the village where he lived, he saw a piece of bacon lying in a window, which said bacon was about a pound weight. After it was *dark*, the fellow came to the window, broke a pane of glass, put in his hand, and stole the bacon. Now, that this was, in strictness of law, a burglary, there
can

can be no doubt: — here was a breaking of the house in the night; an entry, by introducing his hand; and the felonious intent appeared, by his stealing and carrying away his booty.

The learned and worthy *Judge* reprieved the convict, as wisely determining in his own mind, that such a paltry offence as this, though in strictness made capital by the letter of the law, could never fall within the intention of capital punishment.

Such cases as this are undoubtedly to be left to the humanity and discretion of a *Judge*, and on such occasions as this it is, that he

is to exercise *judgment* with *mercy*.
According to *Horace*,

————— *Adfit*

*Regula, peccatis quæ pœnas arroget æquas,
Ne scutica dignum horribili scētere flagello.*

LIB. i. SAT. 3. l. 117—119.

But what has all this to do with turning loose upon the public notorious and desperate villains, who, on the clearest evidence, are proved guilty of offences, which are inconsistent with the peace, good order, and safety of society? What can the public say to this, but with *TULLY* — *Effudistis in me carcerem!*

As the laws of *Draco* were mentioned by the learned *Judge*, it may be

be worth our while to consider a little who this *Draco* was, and what were his *Laws*.

Draco lived about 623 years before CHRIST, and was *Archon* (Gr. ἀρχων) or *chief magistrate*, at *Athens*. We have but very short and imperfect accounts of this man, but he is said to have punished all things with death; even indolence, or the taking an apple, was as severely punished as sacrilege—for which he himself assigned this reason:—“Small faults seem to
 “ me worthy of death, and for the
 “ most flagrant offences I can find
 “ no higher punishment.” See *Ant. Univ. Hist. Vol. vi. p. 292—3.*—
 I can only say, that if such a man

P 3 appeared

appeared among us, it would be the best thing which could be done with him, to shave his head, and put him into *Bedlam*; and I much question whether, among all the *lunatics* there, *one* would be found farther gone from all principles of sound judgment and discretion, than a man who could invent such laws, and give such reasons for so doing.

As to the Laws of *England*, they must, abstractedly and specifically considered, be just what they are, whether executed or not. It was not possible for the Legislature to foresee every event or circumstance, which might appear on the trials of offenders; it is therefore, that the
wisdom

wisdom and discretion of the *Judge*, is to remedy the defects of human foresight, and to take care, that the *spirit* and *intent* of the Law be duly observed in every case: and I own, I cannot conceive, that executing people, who, by their offences, make it difficult to travel the roads, to walk the streets, to sit by our own fire-sides, without danger of being robbed, and perhaps worse—or to turn our horses and other cattle into our fields, without the hazard of losing them—can bring the laws of *England* into the least similitude to a system, which put a man to death for taking an *apple*.

The learned Judge then said—

P 4

“ That

“That it had been disputed among
 “*theological* writers, how far the
 “*Jewish Law* is repealed, or how
 “far it is lawful to put men to
 “death among *Christians*.”

As for *theological* writers and
 disputants, I have read enough of
 them, to make me narrow my
 studies of that sort, to those who,
 being divinely inspired, can neither
 lye nor deceive: and indeed, the
 learned *Judge* seemed of the same
 opinion; for his *Lordship* appealed
 to the Scriptures of the *New Tes-*
tament, for a proof, that it is law-
 ful, among Christians, to put men
 to death for certain crimes.

The first text his Lordship men-
 tioned, was *Rom. xiii. 4.* “*For he*
 “(the

“(the Magistrate) *beareth not the sword in vain.*”

The *sword* is an instrument of death, and stands here, metonymically, to denote *capital punishment*; and this sentence, therefore, evidently proves the power of magistrates to put criminals to death, otherwise these magistrates would bear the *sword in vain*.

But one might carry the text farther, and say, that the magistrate bears the *sword in vain* (*אין*) *to no purpose*, if laws are not duly put in execution. The whole reasoning of the context implies this.

Ver. 3. *Rulers are not a terror to good works, but to the evil. Wilt thou*

*thou then not be afraid of the power?
—do that which is good, and thou
shall have praise of the same.*

Ver. 4. *For he (the ruler or magistrate) is the Minister of God to thee for good. but if thou do that which is evil, be afraid: for he beareth not the sword in vain, for he is the Minister of God, a revenger (ἐκδικος εἰς οὐκ εὖν — an avenger — to execute wrath or punishment) upon him that doeth evil.*—A stronger passage cannot be produced, to prove, that it is not only *lawful*, but the *magistrate's* absolute and indispensable *duty*, to punish offenders according to law: that he is God's Minister for this very purpose.

Ver. 5. *Wherefore ye (Christians—
even*

even then, living under an heathen government) *must needs be subject*—i. e. to the *Laws* of the state—not only for *wrath*—not only with respect to the punishment which will otherwise ensue—but for *conscience sake* — i. e. towards God — who, ver. 1. commands every soul to be subject to the higher powers, and, of course, to obey the Laws.

The other text, mentioned by the *learned Judge*, was Acts xxv. 11. where the Apostle *Paul* says, before *Festus*, the Roman Governor, at his judgment-seat—“ *If I be an offender, or have committed any thing worthy of death, I refuse not to die.*” This text is also much to the purpose, and justifies our Reformers

Reformers in declaring—ART. 37.
 “Of the Civil Magistrates”—that
 “the Laws of the Realm may pu-
 “nish Christian men with DEATH,
 “for heinous and grievous of-
 “fences.”

His *Lordship* next introduced
 the character of *our Saviour*, as
 furnishing an example of meekness,
 lowliness, compassion, and mercy—
 which he seemed to do, by way of
 a gentle reproof to the *Author*, for
 finding fault with the lenity of the
Judges, in granting *reprieves* so
 often to convicts. His *Lordship*
 spake, on this point, with a reve-
 rence and seriousness, that did him
 honour; and, as an instance of the
 pity and forbearance of the “*Bles-*
 “*sed*

“*sed Jesus*” (as his Lordship expressed himself) he mentioned the case of the *woman* taken in *adultery*, whom the *Pharisees* brought to Christ.—But if we examine that passage, we shall find, that *our Lord* was not sitting as a *Judge*: this was a character which he never bore on earth—so far from it, he renounced it, both as to *civil* and *criminal matters*. See Luke xii. 14. John viii. 15. and xii. 47.—If we would see him as a *Judge*, we must look upon him, as exalted to the right hand of God, where he will sit at the last day, as the great Judge of quick and dead.—He then will *judge the world in righteousness, and the people with equity*. Ps. xcvi. 9.

Comp.

Comp. Acts xvii. 31. — *He will render to every man according to his deeds, &c. See Rom. ii. 6—12.*—Happy would it be for the *Judges* of the *earth*, as well as for the *people* of the *earth*, if all *magistrates* would set before them the character of CHRIST as a *Judge*; the Laws would then be duly honoured, and the majesty of government duly preserved; for the *certainity* of punishment would make men fear to offend. They fear little of what is to come, because they don't believe it; but what they see before their eyes, must strike them with terror.

As to the case of the woman taken in *adultery*, which we find recorded

recorded *John* viii. 3—11. She was brought before CHRIST by her accusers, not for the sake of *justice*, but with a malicious design against CHRIST himself, as we may learn from ver. 6. where it appears, that, all they said on the occasion, was merely to *tempt* OUR LORD, to *try* whether they could not have something * *to accuse him* of, either as presuming on an authority against the *Roman* government, if he condemned her, or against the law of *Moses*, if he did not;—but he defeated their malice, and escaped the snare, by leading her accusers into a condemnation of themselves, info-

* Comp. *Matt.* xxii. 15. and *Luke* xx. 20—23.

much that they departed, self-convicted, and left the woman. — Then JESUS, who came not to *condemn the world*, nor to exercise a judicial power in punishing criminals — but even in this very instance renounced it — dismissed the woman, with a caution, which doubtless looked farther than the present life. Comp. John v. 14.

On this case I would humbly propose two questions —

1. What it has to do, one way or other, with a *repeal* of the *Jewish Law*?

2. What precedent can it possibly afford, for a *Judge* to turn out three fourths of the capital convicts upon the public?

As to the imitation of CHRIST, it is not only the *duty*, but the great *privilege* of CHRISTIANS. He left them an *example that they should follow his steps*; and it is their glory so to do; in nothing more than in the *forgiveness of injuries*.—He could, in his very last agonies upon the *cross*, pray for his *persecutors* and *murderers*.—He could even, as it were, *palliate* their offences, by pleading their *ignorance*, instead of *aggravating* it, by reproaching them with their *malice*.—"Father, forgive them!—*they know not what they do!*"—said the DYING JESUS.—His whole life was a pattern of meekness, gentleness, love, and forbearance.

Q —"LORD,"

—“*LORD,*” said *Peter*, “*how oft shall my brother sin against me, and I forgive him?—until seven times?*”
 “*JESUS saith unto him, I say not unto thee, until seven times, but until seventy times seven.*”—OUR LORD was a bright *example* of his own *precepts*; and we are told, 1 JOHN, ii. 6. that, *he that saith he abideth in HIM, ought himself also to walk, as HE also walked.*

Such are the precepts, which must be looked upon as commentaries on the *Divine Law*, that saith—*Thou shalt love thy neighbour as thyself.*—They are the *golden rules* by which all *Christians* ought to walk.—The *King* and the *Subject*—the *Prince* and the *Beggar*—the *Judge* and the *Prisoner*, are
 4 here

here all alike concerned ; *for there is no respect of persons with God.*

But when it is considered, that *a Judge* does not sit in judgment as a *private person*, but in a very high and distinguished *public* character — his duty is not to be measured by *private* considerations, or estimated from personal motives, but from those Laws of which *he is the Minister*, and from that *justice* which he owes the public. — As a man, he would be *sinful*, were he personally to avenge an injury done to himself ; but, as a *Judge*, it would be as *sinful* not to execute the Law on injuries done to others — for in this light, *he is an avenger to execute*

wrath (or punishment) *on them that do evil.* Rom. xiii. 4.

MR. DRYDEN, in his preface to *Juvenal*, well observes, p. xxv. that—"God has placed us in our
 "several stations; the virtues of
 "a *private Christian* are patience,
 "obedience, submission, and the
 "like; but those of a Magistrate,
 "or General, or a King, are pru-
 "dence, counsel, active fortitude,
 "coercive power, awful com-
 "mand, and the exercise of mag-
 "nanimity as well as justice."

The *Law* forbid the *Jews*, as well as *Christians* (for there is but one moral *Law* for either) to *avenge themselves*—or even to *bear a grudge against any*, LEV. xix. 18.—

Yet

Yet the *same Law* says, in one of its judicial institutes, LEV. xxiv. 20.—*Eye for eye, tooth for tooth, &c.*—from which we may learn, a clear and utter discrimination of *acts*, or even *intentions*, of private revenge, from the infliction of punishments by *courts of justice* for public injuries.—The *first* may answer the purposes of *private malice*—but the *other* is absolutely necessary for the preservation of the *public safety*—and this distinction is most indubitably to be understood in what OUR LORD says, *Matt. v. 38. 39.* He there meant to shew the spirit and temper with which we ought to *forgive* those who *injure us*—not to tie up the

hands of the civil *magistrate* from executing the Law;—for if so, there must be an end of all *civil government* whatsoever.

His *Lordship* then concluded, with saying, that “if *Judges* were
 “expected to execute the Law
 “upon those who were convicted,
 “the *Grand Jury* ought to be very
 “cautious, how they exposed
 “people to a trial, by finding bills
 “against them—that they should
 “find no bill, unless the evidence
 “before them was sufficient to
 “convict the prisoner, supposing
 “it proved at the bar, and contradicted by the prisoner’s witnesses.”

Lord Coke, somewhere, says the same

same thing; and this rule is not only a very good one, with respect to exposing men to trial for their lives, but the finding of a *Grand Jury*, may expose people to a sort of *stigma*, which, however innocent they may be, they may never get rid of.—For this reason also, the *Grand Jury* should be very attentive and careful in the execution of their duty.

I had almost forgotten to mention one more observation of the learned *Judge* — which was, on “ the number of *sanguinary* Laws, “ in our statute books, some of “ which, his *Lordship* observed, “ were of long standing, others of “ more recent date, and” (adds

his *Lordship*) “ the only reason
 “ which I can assign for these
 “ Laws being either suffered to
 “ remain from old time unrepeal-
 “ ed, or being more recently en-
 “ acted, is, that the *Legislature*
 “ trusted to the discretion of the
 “ *Judges* as to their execution.”

I do not pretend to give his
Lordship's exact words, either in
 this, or in any other quotation
 from *the Charge* ; but I hope, that
 neither here, nor elsewhere, have I
 mistaken or misrepresented what
 was said.

I must confess, that my appre-
 hension is at a loss to conceive the
 idea of the *Legislative* power of a
 country, enacting a Law for any
purpose

purpose whatsoever, which they do not mean to be executed. That they should enact Laws, with an intent that the *executive power* might suspend their operation, appears to me to be giving themselves a very needless *trouble*, which might have been *spared*, by not enacting such Laws at all.

The word *sanguinary* carries with it a very dreadful meaning, like its plain-*English synonymy*—*bloody*:—it brings sensations into the mind of the most terrible nature; and, when applied to Laws, it imports, that they are arbitrary and cruel, like the Laws of *Draco*, which were calculated for the destruction and misery, not for the preservation and happiness, of mankind.

A Law

A Law may be *severe*, without deserving the name of *sanguinary*; and though the *former* may be justly applied to some of our penal statutes, yet the *latter* never can. A Law which has for its object, and is therefore calculated to promote, the security of peaceable and virtuous people, may justly be styled a *merciful* Law, as it regards the *whole*, though *severe* in its punishment of offenders; and, if without such *punishment*, the *good of the whole* cannot be secured and promoted, this must arise from the audacity and profligacy of those enemies to their fellow-subjects, who will not be intimidated by gentler methods, and who therefore bring upon themselves

selves that *wholesome severity*, which is to make them examples of public justice, that others may fear to offend.

As to leaving the execution or non-execution of statutes to the disposal of the *Judges*, it is ultimately resorting to the fancy or will of individuals, and bringing us to the—*Misera servitus, ubi jus est vagum aut incognitum*. Who can attempt to say, what the consequences of *offending* may be, when, instead of deducing, or apprehending, the *consequences* from the words and plain meaning of the *Law itself*, they are to be suspended, on the uncertainty of private determination?

The

The Law, whether we understand the Common Law, or Statute Law, antient or modern, certainly means, that we should travel the roads, live in our houses, sleep in our beds—in security and peace. It means—that we should turn our horses, sheep, and other cattle, into our fields, without having them stolen from us—that every species of valuable property should be secure in our possession—and that our persons should be safe from the outrage and violence of wicked and desperate robbers.—It means, that we should live in peace and quiet, without fearing either by day or night, and without apprehension of danger, *where-*
ever,

ever, or *whenever*, our lawful business calls us forth.—It cannot, therefore, mean to be suspended in its operation.

The *severity* of our Laws, such is the depravity of human nature, is the only *security* we have left us, for insuring any of these things to us; and I do most firmly believe, that, if the Laws had taken their due and steady course, we should not have had a *twentieth part* of the mischief that has been done, nor have put to death a *twentieth part* of the wretches that have suffered—and that the indiscriminate, partial, causeless, and undue manner in which the operation of the Law has been defeated, has
brought

brought us to the pass we are now arrived at, which is so alarming and terrible, as to call for all the exertions of *public justice*, to save us from *anarchy* itself.

I can feel very sensibly for MEN, whose office it is to stem the dreadful torrent, swoln to its present height, and deluging the poor, oppressed, and violated public, from the neglect of *those*, whose duty long ago called upon them, to check its course. The very attempt must be attended with consequences of the most disagreeable kind; but still, every thing ought to give place to the public safety — and every other consideration be laid aside, but that of restoring
(in

(in a measure at least) the peace and welfare of society.

I now have finished what has occurred to me on his *Lordship's Charge*; but, before I conclude, I must acknowledge, that the civility and politeness with which *his Lordship* delivered his mind, ought not to be forgotten; in this he set an example that did him great honour, and justly deserved the esteem of all that heard him, of none more than of the Author.

As for myself——if any should ask me, in the language of TERENCE——

—*Tantumne ab re tuâ est otii tibi,*

Aliena ut cures, ea quæ nihil ad te attinent?

I would answer, like *Chremes*——

HOMO SUM; *humani nihil a me alienum puto.*

HEAUT. ACT. I. SC. I.

I most

I most entirely agree with SHAKESPEARE—

*The quality of MERCY is not strain'd:
It droppeth as the gentle rain from heaven
Upon the place beneath: it is twice blessed;
It blesteth him that gives, and him that takes:
'Tis mightiest in the mightiest; it becomes
The throned Monarch better than his crown:
His sceptre shews the force of temporal power,
The attribute to awe and majesty,
Wherein doth sit the dread and fear of Kings;
But MERCY is above this scepter'd sway,
It is enthroned in the hearts of Kings,
It is an attribute to GOD himself;
And earthly power doth then shew likest GOD's,
When MERCY seasons JUSTICE.*

MERCH. OF VEN. Act iv. Sc. i.

But, very consistently with all this, I do most unreservedly declare, that, if all the *wild beasts* in the *Tower* were to break loose, and *twelve soldiers*, armed with *loaded muskets*, and having it in their
power

power to destroy them, did not—nothing can be clearer to me, than that they would be answerable, before God and man, for all the mischief which should happen from their neglect.

I ought, indeed, here to apologize to the *gentler savages* of the *Royal menagerie*, for the comparison above hinted at; they, from the instinct of nature, roam for prey to satisfy their hunger, but *human brutes* prey on their own species, to gratify their wickedness.

The inhabitants of countries, where droves of *wolves* are forced into the villages and towns by night, by the severity of weather, to seek for food, are yet safe when

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within their houses—their flocks are also safe, when locked up within their folds—But is this the case with us? where *are* we—where *can* we—now be safe, either by day or night? What farmer, what proprietor of any cattle whatsoever, can secure his property from the ravages of robbers? And yet what thief, in this last respect especially, has much occasion to fear the Law?—let the *reprieves* at every *assizes* give the *answer*.

There is a certain *theatrical* exhibition, equalled in point of wit, humour, and fine writing, by none that has appeared since its first representation, and not *exceeded* by any that went before it—its poignant

nant and masterly vein of satire, which runs throughout the whole, is quite lost upon the lower class of people, and little of the piece may be supposed to remain on their minds, but the *mischief* of it:—this is exceedingly great—and I should suppose, that it is hardly to be doubted, that many a wretched youth, under the first drawings and beginnings of dishonesty, has been determined on the most flagitious courses, from a *noble ardour*, which has been kindled in his imagination, to imitate the illustrious Hero of the *Beggar's Opera*: where vices of the lowest, the most abandoned, and of the most mischievous kind, are represented ra-

ther as accomplishments than as defects—their deformity is concealed under a garb of pleasantry—their dangerous tendency to the public is made a jest of—and their deserved consequences to the villain are removed out of sight by the *catastrophe* of the whole.—To prepare us for this, we see the *chief* of a gang of highwaymen—in the *condemned bold* in *Newgate*—under sentence of death, and, just before his execution, *singing songs* and *drinking brandy*.—The *Sheriff's* arrive—he is going forth to *execution*, to *receive the just reward of his deeds*—when lo! a *reprieve* comes—he is brought back in triumph—he joins his whores and old companions

companions—he sings a lewd song to a merry tune; the conclusion of which contains a *maxim*, that we are to suppose to be the *marrow* of the whole piece, and which tends to eradicate every thoughtful impression, which may have been made by the danger of the *hero*, before the *reprieve* came—thus it stands :

*Then think of this maxim, and put off all sorrow,
The wretch of to-day may be happy to-morrow.*

Then, lest this *maxim* should be forgotten, or lose its effect on the profligate part of the audience—the same tune is often repeated to a jovial dance, performed by *Macbeath* and his companions—and so ends the piece.

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From the above *maxim*, villains are encouraged to hope for *impunity*, and if ever they find themselves liable to qualms and fears, upon setting forth on their ravages—these are to be dissipated by *thinking of this maxim*, &c. Nay, even if convicted—if having received sentence of death, and death stares them in the face—yet *hope* is to be encouraged to the last—all repentance and sorrow, for their sins and wickedness, is to be *banished*—they are to be hardened against every religious and moral impression—and thus exhibit an example—a most mischievous example, of hardness and obduracy, in the eyes of all, who, like themselves, are accustomed,

tomed, by the frequency of *reprieves*, to “*think of this maxim, and*” “*put off all sorrow,*” &c. — That such a performance as this should be suffered in any civilized country, has been, and still is, the amazement of many.

How different a performance is that of the *George Barnwell* of *Lillo*? In this, we see an amiable and innocent youth, drawn, by the artifices and treachery of a wicked woman, into the paths of vice—
 “artless himself, he suspects no art”
 —till, ensnared soul and body, we behold him a capital convict. — He has robbed his master—murdered his uncle—and, in all the depth of woe, aggravated by all

the circumstances which are naturally and judiciously introduced by the *Poet*, this unhappy victim is led forth to public ignominy and death—exhibiting a striking lesson to all the beholders, and an awful caution against the first solicitations of vice.

The plainness and simplicity of the language—the interesting events throughout the whole—the deceitful manner in which vice represents itself to the imagination—the degrees by which it first *ensnares*, and then *enslaves* the soul, and the ruin that attends it, are so well conceived and described, as to render this play, not only a valuable, but an useful acquisition to the stage.

The

The *managers* usually select it for performance in *holiday-times*, when boys from school, apprentices, servants, and the lower kind of tradesmen, frequent the theatres: and I doubt not that this play has been the means of good—what pity is it, that this should be counteracted, by scenes of so contrary a tendency as those of the *Beggar's Opera*!

If *scenical* representations can affect the minds, and influence the conduct of men—how much more may we suppose them attracted by *realities*? If the conduct of the *Dramatis Personæ*, and the disposal of their several characters, may be instrumental to promote good or bad example—to discourage or to promote

promote the interests of vice or of virtue—it can hardly be imagined that *less* is to be expected in *real life* —that the *imaginary reprieve* of *Macheath* can afford incitement to despise and break the Laws, without fear of punishment—and that the *real reprieve* of a convict at the *assizes*, should have a better effect——

——That the imaginary story of *Barnwell*, should fill every eye with tears, every heart with sorrow, and every conscience with an abhorrence and dread of the *first appearance of evil*, as well as of its destructive consequences — and that the *real and certain* execution of the Laws, upon those who are the objects

jects of them, should not have a like influence upon the minds of men.

If, as the late worthy and learned *Judge Blackstone* observes, “ it is
 “ to be looked upon as a monster
 “ in true policy, for a body of
 “ men,” (meaning the *Clergy*, in times of ignorance and superstition)
 “ to reside in the bowels of a state,
 “ and yet be independent of its
 “ Laws,”—how much more monstrous is it, for bodies of *thieves* and *robbers* to be residing in a country, devouring its bowels, and yet be considered rather as objects of *mercy*, than of *punishment*?—“ For,
 “ by the original contract of government, the price of protection

“tion by the united force of in-
 “dividuals, is that of obedience
 “to the united will of the com-
 “munity. This united will is
 “declared in the Laws of the land:
 “and that united force * ought to
 “be exerted in their due and uni-
 “versal execution.”

BLACKST. COM. VOL. IV. 371.

As to *Judges of Assize*, who are
 to sit on the determination of cri-
 minal matters, and to preside where
 the lives and deaths of their fellow-
 subjects are brought in question,
 they are liable to many a very dread-

* In the *original* we find—*is*—but I have
 taken the liberty of a small alteration, as ren-
 dering the sentence rather more agreeable to
 the true state of the case.

ful

ful and heavy tax on their humanity, which nothing but a deep and proper sense of * duty can support them under. They are to be considered as standing between the *crown* and the *public*, answerable to *both* for their conduct as magistrates—but they are also to be viewed as *the* † *ministers of God*, standing, as it were, between the MOST HIGH and their *fellow-creatures*, and answerable, therefore, to God and man, for what they do.

* One rule of which, may be shortly comprehended under the following maxim, viz. During the *trial*, think of nothing but the *prisoner*—after *conviction*, of nothing but the *public*.

† Rom. xiii. 4.

As

As to the first—their duty is exactly defined, prescribed, and limited, by the Laws of the land.

As to the second—the *Holy Scriptures* are replete with instruction for their conduct: what was revealed, as the mind and will of God towards the *Judges of Israel*, in this respect, must ever remain, as the unchangeable *rule of right*, to all *magistrates* whatsoever.

The compilers of that most excellent and scriptural form of worship, the *liturgy of the Church of England*, seem to have been duly sensible of the important and arduous situation of *magistrates*, and of the need they stand in of *divine assistance* in the due execution of their office.

office. We therefore pray—that
 “ it may please God to bless and
 “ keep the *magistrates*, giving them
 “ grace to execute justice, and to
 “ maintain truth.” — And again
 we pray—that “ God would grant
 “ unto all that are * put in au-
 “ thority under the king, that
 “ they may truly and indifferently
 “ minister justice, to the punish-
 “ ment of wickedness and vice,
 “ and to the maintenance of true
 “ religion and virtue.”

To all which, I not only add
 my humble and hearty “ AMEN ”—
 but my sincerest wishes, that our
magistrates may so demean them-

* 1 Tim. ii. 1, 2.

seives,

selves, as to promote and secure the
 public peace and welfare, while in
 this life, and their own eternal re-
 ward from the hands of the GREAT
 JUDGE OF ALL, in that better world,
 where neither *moth nor rust doth*
corrupt, and where THIEVES DO NOT
 BREAK THROUGH NOR STEAL.

THE END.



